

Internal Revenue Service

Appeals Office
1375 E. Ninth Street
Cleveland, OH 44115

Department of the Treasury

Person to Contact:

Employee ID Number:

Tel:

Fax:

Refer Reply to:

AP:FE:CLE:KAS

EIN: C

In Re:

EO Revocation

Form Required to be Filed:

1120

Tax Period(s) Ended:

UIL: 501.33-00

**Last Day to File a Petition with the
United States Tax Court: JUN 02 2009**

Release Number: 200920062

Release Date: 5/15/09

Date: MAR 04 2009

A

B

LEGEND:

A -

B -

C -

Certified Mail

Dear

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). It is determined that you do not qualify as exempt from Federal income tax under IRC Section 501(c)(3) effective January 1, 2000.

Our adverse determination was made for the following reason(s): 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, your 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).

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

You are required to file converted Forms 1120, U.S. Corporation Income Tax Return, for any years which are still open under the statute of limitations. Returns for tax years ending December 31, 2008 and December 31, 2009 should be sent to Internal Revenue Service TEGE: EO: 1100 Commerce St. MC 4920 DAL: Mandatory Review, Dallas, TX 75242-1027 no later than March 31, 2009. Forms 1120 for tax periods beginning on and after January 1, 2005 should be filed with the Cincinnati Service Center, Cincinnati, OH, 45999-0012.

If you decide to contest this determination under the declaratory judgment provisions of IRC section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to -

United States Tax Court
400 Second Street, N.W.

We will notify the appropriate State officials of this action, as required by Code section 6104(c). You should contact your state officials if you have any questions about how this determination may affect your state responsibilities and requirements.

You also 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 is not able to reverse legally correct tax determinations, nor extend the time fixed by law that you have to file a petition in the U.S. 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. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. See the enclosed Notice 1214, *Helpful Contacts for Your "Notice of Deficiency"*, for Taxpayer Advocate telephone numbers and addresses.

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

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "/s/ Charles Fisher". The signature is written in a cursive style with a large, stylized "F".

CHARLES FISHER
TEAM MANAGER

Enclosure:

Notice 1214 *Helpful Contacts for your "Notice of Deficiency"*

Internal Revenue Service

Appeals Office
1375 E. Ninth Street
Cleveland, OH 44115

Date: MAR 04 2009

Department of the Treasury

Person to Contact:

Employee ID Number: .

Tel: .

Fax: .

Refer Reply to:

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In Re:

EO Revocation

Form Required to be Filed:

1120

Tax Period(s) Ended:

12/20 12/20

UIL: 501.33-00

**Last Day to File a Petition with the
United States Tax Court: JUN 02 2009**

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Dear

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Our adverse determination was made for the following reason(s): 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. In addition, your 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).

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

You are required to file converted Forms 1120, U.S. Corporation Income Tax Return, for any years which are still open under the statute of limitations. Returns for tax years ending December 31, 2003 and December 31, 2004 should be sent to Internal Revenue Service TEGE: EO: 1100 Commerce St. MC 4920 DAL: Mandatory Review, Dallas, TX 75242-1027 no later than March 31, 2009. Forms 1120 for tax periods beginning on and after January 1, 2005 should be filed with the Cincinnati Service Center, Cincinnati, OH, 45999-0012.

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

Sincerely,



CHARLES FISHER
TEAM MANAGER

Enclosure:

Notice 1214 Helpful Contacts for your "Notice of Deficiency"



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service
30 East 7th Street, #1130-B
St. Paul, MN 55101

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.

Letter 3618 (04-2002)
Catalog Number 34809F

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

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

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

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez,
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX December 31, 20XX

LEGEND

ORG = Organization name XX = Date Address = address City = city
 XYZ = State website = website DIR-1, DIR-2 & DIR-3 = 1st, 2nd & 3rd
 Director CO-1, CO-2, CO-3 & CO-4 = 1st, 2nd, 3rd & 4th Companies

ISSUE

Whether ORG is operated exclusively for exempt purposes within meaning of I.R.C. § 501(c)(3)?

FACTS

Overview

ORG (ORG or organization) is a XYZ not-for-profit corporation incorporated on March 26, 19XX. The directors were DIR-1, DIR-2, and DIR-3. The address was Address, City, XYZ, which was also the address of the organization for the years under examination. DIR-2 incorporated ORG. He was listed as the President on the organization's application for recognition of tax-exempt status. The Forms 990 for the years under examination list DIR-2 as CEO and DIR-3 as President.

On August 7, 20XX ORG filed an amendment with the State of XYZ, Department of State, changing the name "ORG" to "CO-1"

On September 16, 19XX ORG applied, under penalties of perjury, for recognition as an organization entitled to tax-exempt status under I.R.C. § 501(c)(3) on Form 1023 (application for exemption). On January 20, 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, the Internal Revenue Service (IRS) recognized ORG, as of March 26, 19XX, as a tax-exempt organization as described in § 501(c)(3).

Application for Recognition of Tax-Exempt Status

As noted above, on September 16, 19XX ORG filed its application for exemption with the IRS. In its application ORG stated:

There are many separate yet closely related activities which are a part of ORG overall program. Several of which include: debt repayment plans, income spending plans, monthly maintenance, public awareness campaigns, financial management assistance and family counseling services.

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Regarding fundraising and contributions, ORG stated in its application:

The primary source of funding sought for the operations of ORG will be that received from fundraising efforts focused on the financial institutions that created the \$ dollars of consumer credit card debt. The number of banks heavily invested in the credit card market, and the profits made by them over the past few years, provides ORG with a good source of funding for their program.”

Proposed amendment

By letter dated September 2, 19XX, ORG requested that the IRS accept an additional activity. This letter stated that the organization had solicited donations for a grant/gift making trust, “Home Grants,” and had already received monies for the fund. In the letter ORG said that now it needed help from the IRS to satisfy a HUD request for a “Private Opinion Letter” stating that ORG had the ability to provide grant/gift funds. The letter described the additional activity as follows:

ORG’ in an effort to intercept the negative effects of newly acquired mortgage payments plans to offer a series of home buying assistance programs. One such program is known as “Home Grants.” The offering of this program will insure early and complete home buying education to consumers, enabling them to be better prepared for the financial impact of a mortgage payment. ORG, via the Home Grants Program will provide home purchasing assistance grants for all those successfully completing its programs. Other valuable home buying materials and conduits will be available to consumers as part of this program.”

The letter requesting the “Private Opinion Letter” stated: “Utilizing a grant or gifting program will greatly increase our ‘public awareness’; people will flock to our organization where they can be introduced to our programs.”

By letter dated November 3, 19XX, the IRS responded and informed ORG “We have received your letter regarding your change in activities. We have made it a part of your file. Administering HUD mortgage grants to prospective home buyers.”

Since 20XX 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. As more fully described below, under the organization’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.

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Name of Taxpayer ORG		Year/Period Ended December 31, 20XX December 31, 20XX

Federal Returns

ORG filed Forms 990 for the calendar years ended December 31, 20XX and December 31, 20XX.

According to Part III of the Forms 990 ORG's primary exempt purpose was "Home Grant & Consumer Education." On that part of Form 990 where the organization is instructed to describe its exempt purpose achievements, ORG wrote "To assist people in managing finances through a Home Grant Program to reduce debt."

For both 20XX and 20XX, the dollar amount of grants and allocations reported as expenses in Part III of Form 990 is exactly equal to the amount of grant income reported as program service revenue in Part VII.

On its 20XX Form 990, at line 1, ORG reported contributions, or direct public support, of \$. However, ORG's trial balance for that period classifies \$ as grant fees (i.e., the fees collected by ORG for each real estate transaction). On line 93 of Part VII (Analysis of Income-Producing Activities), of the 20XX Form 990 ORG reported program service revenue as follows: (1) grant income of \$; and (2) debt assistance of \$, for a total of \$. Its trial balance lists grant income of \$ ("mandatory replenishments") and sales of \$ (sale of books and tapes). The trial balance uses the label "grant income." The organization provided some of its webpages, one of which states:

The program has a mandatory replenishment requirement. This means that for every dollar gifted by ORG, there must be a matching donation. The source of the donations may include individual, business and government sources; grant recipients are not acceptable donors.

Additionally, in a telephone call with the examiner on August 22, 20XX, DIR-2 used the term "mandatory replenishment." A summary of the call, using that term, was mailed to DIR-2 later that day.

In 20XX, ORG reported contributions of \$. As in 20XX, these are the fees charged by ORG and received from each home owner who sells to a recipient of a ORG grant. In 20XX, ORG completed Part VII of Form 990 providing an analysis of income producing activities as follows: (1) grant income of \$ ("mandatory replenishments"); (2) debt assistance of \$; (3) and CO-1 license (income from others who use the organization's spending/budget planners with their clients and customers) of \$, for a total of \$. ORG has not provided a trial balance for the year 20XX.

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Operation of ORG's Down Payment Assistance Program

ORG, through its website and seminars at real estate trade shows, 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 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.

ORG's website lists the following steps to get a grant:

Step 1

Register yourself* online at website or any mortgage specialist** can register you and provide you with a pre-approval for a ORG Grant for up to \$.

*Upon registering yourself on-line, ORG Grants will mail you a pre-approval and welcome letter.

** You may email Lender Requests for a lender in your area that is already working with the ORG Grants program or may use a lender of your choice. In the case of the latter, please have your loan officer contact us regarding your file.

Step 2

Consult with your mortgage specialist** or a realtor familiar with the ORG Grants Program. Criteria for receiving gift funds are:

- A. You must be qualified for a loan product that accepts gift funds
FHA Mortgages typically accept gift funds.

Check with your mortgage specialist for other programs that accept gift funds.

- B. There must be a source of replenishment for gift funds sent to your closing.

A Pledge letter must be completed and submitted to ORG prior to closing.

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Gift funds come from a revolving trust account therefore all gift funds must be replenished by a source other than the buyer.

Individuals, employers, and relatives are acceptable sources for replenishments which are made by a donation to ORG, a 501c# non profit organization registered with the IRS.

Your Realtors or Mortgage company can assist you in finding a suitable source of replenishment for gift funds.

Step 3

Once you have located a home, your mortgage specialist will finalize the amount of your ORG Grant and provide you with a formal and fully executed "Gift Letter."

Step 4

A ORG educator will contact you to complete your mandatory homebuyer education and begin the preparation of your customized spending planner. This service is part of the grant program, is of no cost to you and is done over the phone.

Step 5

Your mortgage company will forward the closers wire instructions to ORG and a Closing Instruction Agreement will be executed by ORG and sent to the closing agent for your closing date grant amount verification and wire instructions verification. ORG wires funds to escrow on the day of your closing.

ORG provided printouts of its website which stated:

With the ORG Grant Program, buyers get a free downpayment gift when they purchase a property that is listed with the ORG program. The only requirement for this gift, is that a source must be found to repay the funds in the ORG trust account.

Donations from home sellers are used to help other worthy families purchase a home of their own.

A typical source of fund replenishment is the home seller. Sellers typically received full asking price for their homes and are delighted to help fund the ORG program.

These "repayment funds" are made from the proceeds of the sale after closing.

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A small fixed fee of \$ is also required to cover administrative fees at ORG. This fabulous program allows the buyer to get into a home with no money down while the seller gets the desired price. And, because the house sells for the full asking price, the realtor commissions is higher as well.

The following example was provided by ORG from its website:

"Standard Home Transaction"	ORG Grant Transaction
List	List
Price	Price
Sales Price (Reduced to sell)	Sales Price
Less realtor commission	Less realtor commission
	Less donation to ORG
Seller Net	(with fee) Seller Net

The example reveals that under ORG's DPA program both the realtor and the seller earn more. In the "Standard Home Transaction" example the realtor's commission is 5.86 percent, whereas in the "ORG Grant Transaction" example it is 6%. The donation to ORG is 3% of the price plus \$ ($\$ \times .03 = \$$; $\$ + \$ = \$$). Even after the "donation" in the "ORG Grant Transaction" the seller's net in the example is higher (\$ compared to \$).

The website material provided by ORG also contains the following information regarding the amounts to be paid to ORG by sellers:

As a Seller, in the ORG Grant Program, you may be asked to participate in the replenishment of the ORG Grant Gift Trust Fund. If this to be the case, it must be done in a voluntary capacity; i.e., no contractual obligation. ORG Pledge letters are available for those willing to make a contribution. It is quite common for Realtors and Mortgage Professionals to errantly compare these replenishment to seller concessions. The fact is, when the seller of a home makes a contribution to ORG, it is coming from their 'net' proceeds."

The pledge letter used by ORG includes the following language:

The above listed donor(s) hereby voluntarily direct the escrow officer/agent or closing attorney of the listed property, to make a charitable contribution to ORG (ORG) from the

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“Net Proceeds” received from the sale of the property herein described.” This form also says, “Donor(s) are desirous of making a charitable donation to ORG in the amount of \$ _____ along with a \$ administration/education fee, making a total payment to ORG in the amount of \$ _____.”

The closing escrow agent or attorney who is disbursing the proceeds of the transaction is hereby requested to deliver the same amount to ORG via overnight check.”

Through ORG’s Home Grant Program buyers receive a “gift” of the funds that they use for the down payment. Sellers and ORG entered into agreements that required sellers to pay ORG an amount equal to the down payment “gift” that the buyer received as a home grant plus a fee of \$. ORG claimed that the seller’s payment was not provided directly to the buyer, but instead was used to “replenish” the pool of funds used to provide “gifts” to subsequent buyers.

In essence, these transactions result in a circular flow of the money. The sellers make payments to ORG. ORG provides the funds to the buyers, who use the funds to make the down payment necessary to purchase the seller’s home, thus returning the money to the seller.

The documents produced by ORG explicitly state that the down payment “gift” to a buyer comes from preexisting funds rather than from the seller’s “contribution” in the transaction. However, the organization does not solicit outside public contributions or have any other source of funds other than “contributions” from sellers and related fees. Additionally, 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, it is apparent that the actual source of the down payment assistance is the seller’s “contribution” in that particular transaction.

ORG provided a sample of the closing instructions agreement that it uses. The closing agent in the sample is “CO-2.” The instructions provide that a specific and limited gift will be sent to the account of CO-2. The instructions further provide that

ORG has made this gift under the belief and expectation that a Donor(s) voluntarily agrees to “replenish” ORG’ Trust Account in the amount of _____. Therefore, the release of the gift funds to _____ is contingent upon CO-2 securing _____ from the donor(s) and forwarding same to ORG, Inc, as overnight or wire only.”

It is clear from these instructions that the down payment assistance funds are released to the Home Grant recipient only after the replacement funds in the same amount have been sent to ORG.

ORG’s website contains an addendum to Closing Instructions which states that it is a problem

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if the ORG grant replenishments appear on the Seller side of the HUD-I. The website states that

Doing this with the funds may turn the grant/gift into a sellers concession; this would then negate the ability of the funds to be used by the buyer per their loan approval. If the Seller(s) is the source of the ORG replenishment, the funds must come directly from the seller, not from a deduction on the HUD-I. It is most important that the replenishment of our trust account be from proceeds that are not directly associated with the closing.

Either of the following procedures, which may be considered 'indirect association' is acceptable:

- 1). The Seller(s) may bring a bank or certified check, drawn from their own account, equaling the amount of the replenishment (gift/grant amount) made payable to ORG, to the closing and tender such to the closing agent for delivery to ORG.
- 2). Provided the ORG "Pledge Letter is signed by the Seller(s), the 'donation' to ORG may be reflected in the 1300 section of the HUD-I as a 'Charitable Contribution'.
- 3). The Seller may request a separate check drafted from 'Net Proceeds' equaling the amount of the replenishment (Grant/gift amount) made payable to him/her/them, which then is to be endorsed on the reverse side, as follows:
Pay to the order of
ORG
'Charitable Donation'
Seller(s) must endorse (the closing agent is to collect the check for delivery to ORG).

Sellers The material describing ORG's program shows how it 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, on its website, the organization maintained that ORG Grants are a proven method for quick sales, stating "In many cases, our clients will offer you the full-appraised value for your home."

ORG provided a copy of an acknowledgment letter which it generates on request. This letter is headed "RE: Your donation." The letter thanks the addressee for the financial contribution and lists the "gifts" received from the addressee. It also says that "As with any matter involving tax-filing, it is strongly suggested that you consult a professional tax advisor before listing this deduction on your tax return." This letter also states that ORG is a 501(c)(3) organization. In

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addition, the terms “charitable contribution” or “charitable deduction” were used on the closing statements for the transactions facilitated by ORG.

Realtors ORG’s website tells realtors:

Promote yourself as a realtor with access to grant money to help people buy homes. Some realtors run ads in the classified such as: ‘DOWN PAYMENT GRANTS AVAILABLE from a nonprofit organization. Any Credit, Any Income, Any Home. Call [insert contact information] to obtain your grant.’

Educational programs

In its Form 1023 application, in the material subsequently submitted by ORG’s with its request for a “private opinion letter” and in ORG’s replies to IRS inquiries, ORG emphasized the need for money management education and its ability to provide tools for budgeting and handling debt.

Although the request for an amendment to its determination letter stated that ORG would be making grants to those who had completed an educational program, actually, grants were made first. Then recipients were offered an opportunity for telephone or online money management help.

Minutes of various meetings of ORG’s board of directors throughout 20XX and 20XX show what ORG characterizes as educational programs and opportunities. The minutes of January 8, 20XX disclose an event in City, XYZ to “[t]rain mortgage professionals in the educational programs of ORG.” The minutes of July 5, 20XX approve travel to XYZ for meetings allegedly intended to further the education purpose of ORG; however, there is no explanation of how the educational purpose is to be furthered. The minutes of August 28, 20XX resolved to conduct a public seminar in XYZ. The minutes of September 15, 20XX resolve to attend a real estate conference in XYZ. The minutes of October 21, 20XX report that ORG will attend a real estate mortgage trade show in City, XYZ. These October minutes also authorize a second seminar in City in two phases — a free public workshop and a professional training camp.

The minutes of January 6, 20XX report that a motion passed to increase expenditures for public outreach efforts and mentions that literature will better equip real estate professionals to make ORG educational programs more widely known. These minutes also authorize travel to Cincinnati, XYZ to meet with lenders that are willing to provide seminars based on the ORG system. The minutes of February 20, 20XX report that a motion passed to authorize travel to City, XYZ to meet with a person who is a trainer in the real estate and mortgage industry.

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The minutes of October 1, 20XX report that an “elaborate training seminar” is planned at the CO-3 and that the event will be used in the making of an CO-1 TV program.

DIR-2, ORG’s CEO, stated in a telephone call with the examiner on August 22, 20XX that recipients of grants are supposed to register for the web-based course to help them with their money management skills. ORG’s website states that the grant recipients will be contacted by ORG to complete the mandatory homebuyer education, which is done by telephone. In response to a questionnaire the IRS sent to it, ORG stated:

Our “counselors” which are actually referred to as “staff” are trained to identify specific needs of the person looking for assistance. A referral is usually the result of such a query. In general, the majority of requests fielded by our staff are generally related to our web program; this is more technical than counseling.

The organization provided copies of some of the documents it used when trying to attract sponsors for its budgeting program. In undated material headed “CO-1 Online Budget Builder Opportunity-Executive Summary,” which ORG indicated it had provided to Bank, an online bank, the organization stated:

CO-1’s “Private label” Solution will create a seamless bond between CO-1’s.Net technology and the Bank Direct Website. With as little as one additional orange circle, customers and visitors of Bank Direct’s website will have instant access to the new “Bank Direct – Budget Builder”.

Data mining is just one of the many benefits Bank Direct will realize with the CO-1 Budget Builder. Although CO-1 requires its hosts to maintain a strict confidentiality policy for the collected data through the tool, having exclusive access the budget data is very valuable. Again, subtlety should be the rule, when targeting specific products and services to those on a ‘needs basis’ Example, far too many families are under-insured when it comes to life’s greatest tragedy, the loss of a mother or father. Bank Direct can email, direct mail even telephone those who do not have life insurance with Bank Direct products that will correct such dangerous voids. Similar applications span all areas that make up the budget building process.....

All of CO-1’s consumer advocacy efforts are included with its technology. This can, when effectively leveraged, prove to be an excellent means to generate new business while also helping to retain existing accounts.

In an undated letter to a vice-president of CO-4, ORG stated:

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Thank you for taking the time to meet with me in October.....After my visit, I realized that we needed to have a more compelling opportunity for CO-4 if we are to build the relationship we seek. That said, upon my return, I organized a special team to work on a value proposition that would reduce the “per lead” cost of CO-1 contacts, while greatly increasing CO-4’s exposure to our viewers.....

We would like to invite all our viewers to pursue possible savings with their Auto Insurance Premiums, Homeowners Insurance and for them to pursue CO-4’s new personal Identity Restoration coverage. Recent enhancements to our Spending Planner allow us to personalize each of the inserts in the Spending Planner books. This will enable us to list specific third party services directly on the pages that relate to the items they are tracking. An example would be an offer for a FREE auto insurance quote from CO-4 on the page where their auto insurance is being carefully tracked. This would put CO-4’s phone number in front of 100% of our Spending Planner users each time they open their planner.

The organization supplied a three ring notebook with a cover featuring the words “Balanced Budget Spending Planner.” The cover also has a design of an American flag, a calculator and a smiling young couple. Inside is a sample budget with tabs for categories like housing, auto and variable.

The organization provided no information on the number of persons who started any budgeting training it provided or the number who completed it. The organization provided no information showing that it offered classes on a regular basis. The organization provided no information showing that it followed up on grantees who failed to start or failed to complete the training it suggested.

LAW

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

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 § 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]

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purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes.”

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

Treasury Regulation Section 1.501(c)(3)-1(d)(2) defines the term “charitable” for § 501(c)(3) purposes as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term “charitable” also includes the advancement of education. Id.

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

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

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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 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:

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Among the major factors courts have considered in assessing commerciality are competition with for-profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.

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

Revenue Ruling 67-138, 1967-1 C.B. 129, held that helping low-income persons obtain adequate and affordable housing is a "charitable" activity because it relieves the poor and distressed or underprivileged. In 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.

Revenue Ruling 70-585, 1970-2 C.B. 115, discussed four situations of organizations providing housing and whether each qualified as charitable within the meaning of § 501(c)(3). Situation 1 described an organization formed to construct new homes and renovate existing homes for sale to low-income families who could not obtain financing through conventional channels. The organization also provided financial aid to low-income families who were eligible for loans under a Federal housing program but did not have the necessary down payment. The organization made rehabilitated homes available to families who could not qualify for any type of mortgage. When possible, the organization recovered the cost of the homes through very small periodic payments, but its operating funds were obtained from federal loans and contributions from the general public. The revenue ruling held that by providing homes for low-income families who otherwise could not afford them, the organization relieved the poor and distressed.

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

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Situation 3 described an organization formed to formulate plans for the renewal and rehabilitation of a particular area in a city as a residential community. The median income level in the area was lower than in other sections of the city and the housing in the area generally was old and badly deteriorated. The organization developed an overall plan for the rehabilitation of the area, sponsored a renewal project, and involved residents in the area renewal plan. The organization also purchased an apartment building that it rehabilitated and rented at cost to low and moderate income families with a preference given to residents of the area. The revenue ruling held that the organization was described in § 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 § 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.

In early 2006 the IRS issued Revenue Ruling 2006-27, 2006-21 I.R.B. 915, which describes three organizations involved in providing down payment assistance and determines whether each qualifies for exempt status under § 501(c)(3). 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 insure 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 the organization is operated exclusively for charitable purposes and qualifies for exemption from federal taxation as an organization described in section 501(c)(3).

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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 its 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).

Benefiting Private Interests

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).

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 § 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 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

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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.

Section 102 provides that the value of property acquired by gift is excluded from gross income. A gift "proceeds from a 'detached and disinterested generosity,' ... 'out of affection, respect, admiration, charity or like impulses.'" Commissioner v. Duberstein, 363 U.S. 278, 285 (1960). Payments that proceed from "the constraining force of any moral or legal duty," or from "... 'the incentive of anticipated benefit' of an economic nature," are not gifts. Duberstein, 363 U.S. at 285. Thus, payments attendant to ordinary business or commercial transactions, or that proceed primarily from the moral or legal obligations attendant to such transactions, are not gifts.

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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 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

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 (3) violates 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. The organization's down payment assistance program does not operate in a

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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. does not have any income limitations for participation in its DPA program. It does not screen applicants for down payment assistance based on income. Instead, the program is open to anyone, without any income limitations, who otherwise qualified for these loans. The program is not even limited to first-time homebuyers or single family homes.

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.

emphasized money management education to individuals and families in its responses to questions both during the examination and when it requested approval of its amendment. sold a small amount of material in books and on tapes related to debt management and fair credit reporting, and offered a few seminars to prospective home buyers. Technology (e.g., web-case seminars and infomercials) was primary method of delivery of any consumer education and training

Most of educational activities, as reported in its minutes, were directed at people in the real estate field rather than at consumers. focused on making real estate agents and mortgage lenders aware of its program in order to increase business.

Additionally, much of what purported to be consumer education on budgeting was actually marketing for financial and insurance services. told mortgage brokers that each visitor to its website gets a financial review and a warm introduction to local professionals to service the financial or mortgage needs identified in the budget process. offered mortgage brokers, loan officers and other real estate professionals an opportunity to be a sponsor and, thus, a "trusted local resource." This indicates that spending planner, which claims is an educational tool, was as much a marketing vehicle for those who referred clients to as it was a tool for the instruction and improvement of any individual's skills.

The educational programs offered by Inc. were designed as much to attract new grant recipients as to instruct the individuals on useful subjects. Instead of awarding grants after the completion of an educational course, the organization offered its course to buyers

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who had been chosen as grant recipients because they were buying from a seller who had promised to "replenish" funds.

The majority of resources are spent on down payment assistance. In 20 grants for down payment assistance totaled \$ or about of total revenue in the amount of In 20 \$ was spent for down payment assistance, or about % of total revenue in the amount of \$

In addition to generating fees for itself, was operated to benefit home sellers, home buyers, real estate brokers and mortgage lenders — none of which are a charitable class.

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 the grant program of were directed to exclusively low-income individuals or disadvantaged communities, the organization'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.

Like the organization considered in American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), is structured and operated to assist the private parties who fund it and give it business. Sellers who participate in 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. Buyers who participate in home grant program benefit by being able to purchase a home without having to commit more of their own funds. Real estate professionals who participate in 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 the home grant program operated by provides ample private benefit to the various parties in each home sale.

The manner in which operated its DPA program shows that the private benefit to the various participants in activities was the intended outcome of the operations rather than a mere incident of such operations. The 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, the organization relies exclusively on sellers and other real-estate related businesses that stand to benefit from the transactions it

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facilitates. neither solicits nor receives funds from other sources. Before providing down payment assistance, the organization's grantmaking 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. requires the home 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. secures an agreement from the seller stipulating to this arrangement prior to the closing. No DPA assistance transactions take place unless is assured that the amount of the down payment plus the fee is or will be paid by the seller upon closing. The instructions to title and escrow companies provide that at the close of escrow the seller's contribution, and the administrative fee charged by must be sent to the organization by wire or overnight mail. The receipt by 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 the operations of In this respect, 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.

The manner in which operated its DPA program shows that the organization was in the business of facilitating the sales of homes in a manner indistinguishable from a commercial enterprise.

In this way, it is 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), the business operated by was not utilized as a mere instrument of furthering charitable purpose, but was an end in itself. provided services to home sellers for which it charged a market rate fee. did not market its services primarily to persons within a charitable class. The primary goal of consisted of maximizing the fees it derived from facilitating the sales of real property. 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 the activities of furthered commercial rather than exempt purposes.

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

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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 is not tax deductible as a charitable contribution under § 170 because the seller receives valuable consideration in return for the payment. In addition, the seller's payment to is not tax deductible to the seller because the payment is compulsory. Furthermore, the payments from the home sellers to 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).

The organization has said that it tells people to consult a tax advisor. However, by providing sellers a letter informing them that is a 501(c)(3) organization and by using the term "charitable contribution" or "charitable deduction" on the closing statements of the transactions it facilitates, led sellers and/or their agents to believe that they would be able to claim a charitable contribution deduction for their payments to By labeling the seller "replenishments" as a "charitable contribution" or "charitable donation" in the instructions to the closing agent, the organization misrepresented the quid pro quo nature of these payments. In this way promoted improper charitable contribution deductions in connection with its DPA program. As a result, 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 exemption back to the organization's inception because operated in a manner materially different from that represented in its application for exemption and also in a manner materially different from that represented when the organization asked the Internal Revenue Service for a "private opinion letter."

As noted earlier, HUD rules require that down payment assistance come from only certain sources, including a charitable organization. What claims is a "private opinion letter" is merely acknowledgement that the organization notified the IRS that it planned to add down payment assistance to its activities. The information that submitted to the Internal Revenue Service in 1999 did not disclose the circular flow of funds or mention the requirement of mandatory replenishment. The information did not disclose that there would be no income

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restrictions on grant recipients nor did it disclose that _____ would allow other financial companies to use the budget data it obtained for marketing purposes.

To operate its program and earn the fees associated with it, _____ had to be able to show mortgage lenders that it had status as a charitable organization, which is why it submitted an amendment to its determination application.

Although the organization advised the IRS that it planned to add an activity before it started the Home Grant Program, it did not disclose the nature of the activity in sufficient detail for the IRS to know that it relied on the circular flow of funds from home seller to home buyer, or that it condoned improper tax deductions. It also did not disclose that its educational programs would also be a vehicle to increase its business and the business of those who brought it transactions.

_____ did not have any income limitations for its DPA program and did not screen applicants for down payment assistance based on income. Rather, the program operated by _____ provided "gifts" to any homebuyers who otherwise qualified for a loan. 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. The organization's operation of its down payment assistance activities in a manner materially different from that represented in its application for exemption and other exchanges with the Internal Revenue Service justifies retroactive revocation of the tax exempt status of _____

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 down payment assistance program was not operated in accordance with Internal Revenue Code § 501(c)(3) and the regulations thereunder governing qualification for tax exemption under Code. ORG provided down payment assistance, purportedly in the form of a gift, to individuals and families for the purchase of a home. It offered down payment assistance to interested buyers regardless of the buyers' income levels or need. ORG's activities did not target neighborhoods in need of rehabilitation or other relief, such as lessening neighborhood tensions or eliminating prejudice and discrimination.

ORG operated in a manner indistinguishable from a commercial enterprise. Its primary activity was brokering transactions to facilitate the selling of homes. ORG's primary goal was to maximize the fees from these transactions. Its brokering services were marketed to homebuyers, sellers, realtors, lenders, home builders, and title companies regardless of the buyers' income level or need and regardless of the condition of the community in which the home was located.

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Alliances were built with the realtors, lenders, home builders, and title companies to ensure future business for the mutual benefit of the participants.

Any activities providing education on budgeting or money management skills to grant recipients or others was an insubstantial activity compared to ORG's facilitating the circular flow of funds from home seller to home buyer and back to seller.

ORG's amendment to its Form 1023 application stated that the Home Grants Program would provide home purchasing assistance grants for all those successfully completing ORG's program. In fact, the grant recipient would have already selected a home and been approved for a loan before any financial education was offered.

Because the organization's primary activity was not conducted in a manner designed to further § 501(c)(3) purposes, ORG was not operated exclusively for exempt purposes within the meaning of § 501(c)(3). Furthermore, ORG promoted an abusive tax avoidance scheme in connection with its DPA program by failing to advise sellers that their payments to the organization were quid pro quo payments for services rather than payments motivated by detached and disinterested generosity. Promoting false deductions in this manner is inconsistent with § 501(c)(3) exemption.

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

TAXPAYER'S POSITION

In a letter dated May 23, 20XX, replying to the Internal Revenue Service's first request for information, DIR-2, CEO of ORG wrote:

It is fairly evident that the IRS is targeting non-profits who were organized to provide down-payment assistance to low-to-moderate income individuals and families... This is a major concern of this organization, as we have and continue (albeit in a limited capacity) to participate in providing down-payment assistance. However, participation in such was only undertaken after receiving a 'Private Opinion Letter' from the IRS to do so

The recent IRS ruling is very clear, the targets are equally clear. We simply ask that the IRS recognize the differences between ORG, and those organizations that may have operated outside the parameters of what is now defined as 'Charitable'. ORG's history of providing genuine educational services to the public, combined with its current activities

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to help those threaten by the 'lack of money management education' in this country 'clearly' make our public efforts very much needed. To attack this organization for participating (via an IRS approval) in providing down-payment assistance would be doing the public a terrible injustice.

The government does not know ORG's position with respect to the issues, facts, applicable law and government's position as they are discussed in this report. ORG will be allowed 30 days to review this report and respond with a protest if ORG considers one necessary.