



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201039048**
Release Date: 10/1/10
Date: May 1, 2007

UIL Code
483.05-00
501.03-05
501.33-00

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 90 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: May 1, 2007

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

M = The Organization
State = State of Incorporation
Date = Date of Incorporation
Street = Building address
X = Officer #1
Y = Officer #2

UIL Nos.: 483.05-00
501.03-05
501.33-00

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Facts:

You, M, are a State Public Benefit Corporation formed on Date. Article II, Section A of your Articles of Incorporation provides that you are organized for charitable purposes. Article IV further provides that you are organized exclusively for charitable, religious, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

Your Articles of Incorporation, as well as Article 2 of your Bylaws further state that the primary objectives and purposes of the organization are to provide housing, resident care and/or occupational skills training to individuals and/or families.

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

Your application Form 1023 provides that you will initially purchase a single family residence in need of repair. You will complete the necessary repairs to bring the house to its highest market value. You will then sell the house at fair market value for cash. The sale price will be based on the appraised value of the property. The proceeds from this sale will be used to purchase additional houses to be remodeled and then sold.

In your letter dated February , 20 you provided a detailed listing and schedule for the acquisition, refurbishing and sale of properties. Specifically, you provided information regarding a property you are considering purchasing located on Street. You stated that you will try to purchase the property for \$ you will spend approximately \$ refurbish the property, which includes a 10% cushion; you will have approximately \$ in other expenses; plus you will have additional selling expenses for a total approximate cost of \$ You anticipate selling the property for \$ the expected appraised value of the property. You state that the "estimated net revenue from the sale of Street will be \$ You have not explained why you intend on selling this property at a substantial profit.

You will also provide a maximum of % of the sales price in the form of a loan to the buyer. This will be used for the down payment of the house, and you will forgive this debt upon the buyer remaining in the home for a period of 10 years. In the transaction detailed in your response dated February 15th, you state that you will gift % of the purchase price (\$) to the buyer, which will be forgivable after 10 years of occupancy. The purchaser will be required to acquire a loan for \$ and you will also carry back a second mortgage in the amount of \$.

In order to qualify for this program, a family must meet "an initial annual income criteria." Specifically, your program will be limited to families whose income is less than % of the median income for the area. Your response dated January , 20 states that your sales will be directed towards purchasers that have a credit score of 600 or more and sufficient income, but whose income does not exceed the income limitations described above. You state that you will not require the buyer to qualify for any specific loan program. You state that "there are sufficient loan programs available in the conventional and sub-prime sector to provide purchase money financing". You will also consider financing the purchase transactions yourself, and reselling the notes and deeds of trust into the secondary market.

You will not conduct any specific educational programs to ensure that the buyers are able to acquire and keep safe, decent and sanitary homes. Your response dated January , 20 also states that as part of the initial consultation and the purchase contract, the purchaser will be required to stipulate that they will keep the property and living quarters in a safe, decent and sanitary condition. You also state that you will inspect the property annually in order to verify occupancy and to verify that the property is being kept safe decent and sanitary. If the home is not occupied by the buyer, or the home is not being kept in a safe, decent and sanitary condition, the buyer will be considered in default of his obligations.

You will not conduct any specific educational programs to ensure that the buyer can acquire and keep affordable homes and prevent default on their mortgages. You state that default consideration will begin from the initial application, when you obtain information regarding the

purchaser's credit and ability to pay. You state that this will serve as an indication of the purchasers desire to pay.

You indicated that your sources of financial support, in order of size, would be 1) from the self sustaining exempt activities described above (the resale of single family residences), 2) from grants from governmental agencies, 3) from gifts and grants from private contributors, and 4) from charity dinners.

The Board of Directors and the officers of M are X and Y, husband and wife. X's business experience includes real estate private money mortgage lending, real estate development and property management. X is a licensed State Real Estate Broker. You state that no salaries or any form of reasonable compensation have yet been determined. However, Article 3 Section 6 of your Bylaws discusses additional reasonable compensation for directors. It states that there will be "a beginning monthly salary of \$. plus a percentage of the following activities that shall have been implemented, coordinated and/or overseen: % of donations/contributions raised, % of gross sales resulting from auction/retail activities % of gross proceeds resulting from event sales/proceeds and % of gross proceeds from the sales of any and all real estate transactions. A maximum reasonable combined director compensation shall not exceed \$: in any calendar year."

Law:

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

Section 1.501(c)(3)-1(a)(1) of the Income tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization operates exclusively for exempt purposes if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3) of the Code. An organization must not engage in substantial activities that fail to further an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and 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 and operated for the benefit of private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as used in section 501(c)(3) of the Code as including the relief of the poor and distressed or of the underprivileged. The term "charitable" also includes the advancement of education.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides, in part, that the term "educational" as used in section 501(c)(3) of the Code relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization that operates a trade or business as a substantial part of its activities may meet the requirements of section 501(c)(3) of the Code if the trade or business furthers an exempt purpose, and provided the organization's primary purpose does not consist of carrying on an unrelated trade or business.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number of importance of truly . . . [exempt] purposes."

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. "Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, *inter alia*, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations."

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), *aff'd*, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3). Easter House, 12 Cl. Ct. at 485-486.

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

Revenue Ruling 70-585, 1970-2 C.B. 115, discusses four examples of organizations providing housing and whether each qualified as charitable within the meaning of section 501(c)(3) of the Code. Situation 1 describes an organization formed to construct new homes and renovate existing homes for sale to low-income families who could not obtain financing through conventional channels. The organization also provides financial aid to eligible families who do not have the necessary down payment. When possible, the organization recovered the cost of the homes through very small periodic payments, but its operating funds were obtained from federal loans and contributions from the general public. The revenue ruling holds that by providing homes for low-income families who otherwise could not afford them, the organization relieved the poor and distressed.

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

Situation 3 describes an organization formed to formulate plans for the renewal and rehabilitation of a particular area in a city as a residential community. The median-income level in the area was lower than in other sections of the city and the housing in the area was generally old and badly deteriorated. The organization developed an overall plan for the rehabilitation of the area; it sponsored a renewal project; and involved residents in the area renewal plan. The organization also purchased apartment buildings that it rehabilitated and rented at cost to low and moderate income families with a preference given to residents of the area. The revenue ruling holds that the organization is described in section 501(c)(3) of the Code because its purposes and activities combated community deterioration.

Situation 4 describes an organization formed to alleviate a shortage of housing for moderate-income families in a particular community. The organization planned to build housing to be rented at cost to moderate-income families. The Service held that the organization failed to qualify for exemption under section 501(c)(3) of the Code because the organization's program did not provide relief to the poor or further any other charitable purpose within the meaning of section 501(c)(3) and the regulations.

Revenue Ruling 76-408, 1976-2C.B. 145, holds that an organization that provides interest-free home repair loans in a badly deteriorated urban residential area to low-income homeowners who are unable to obtain loans elsewhere qualifies for exemption from federal income tax under section 501(c)(3) of the Code because it is operated exclusively for charitable purposes.

Rev. Rul. 2006-27, 2006-21 I.R.B. 915 discusses whether organizations that otherwise meet the requirements of § 501(c)(3) of the Internal Revenue Code and are described in the situations below operate exclusively for charitable purposes.

Situation 1 describes a non-profit corporation that helps low-income individuals and families purchase decent, safe and sanitary homes throughout the metropolitan area in which X is located. As a substantial part of its activities, X makes assistance available exclusively to low-income individuals and families to provide part or all of the funds they need to make a down payment on the purchase of a home. X uses standards set by Federal housing statutes and administered by the Department of Housing and Urban Development to determine who is a low-income individual. Individuals are eligible to receive assistance from X's program if they are low-income individuals, 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. X also offers financial counseling seminars and conducts other educational activities to help prepare potential low-income home buyers for the responsibility of home ownership.

X will consider applications for assistance in connection with an applicant's purchase of any home that meets X's standards for habitability. Before making a grant of down payment assistance, X requires a home inspection report for the property that the applicant intends to buy to ensure that the house will be habitable.

To fund its down payment assistance program and other activities, X conducts a broad based fundraising program that attracts gifts, grants and contributions from several foundations, businesses and the general public.

X's grantmaking process is structured to ensure that X's staff awarding grants on behalf of X does 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. The staff also does not know whether any of the interested parties to the transaction have been solicited for contributions to X or have made pledges or actual contributions to X. Further, X does not accept any contributions contingent on the sale of a particular property or properties.

Situation 2 describes a nonprofit corporation that is like X in all respects as set forth in Situation 1, except as follows. Under Y's grantmaking procedures, Y's staff considering a particular applicant's application knows the identity of the party selling the home to the grant applicant and may also know the identities of other parties, such as real estate agents and developers, who may receive a financial benefit from the sale. Moreover, in substantially all of the cases in which Y provides down payment assistance to a home buyer, Y receives a payment from the home seller. Further, there is a direct correlation between the amount of the down payment assistance provided by Y in connection with each of these transactions and the amount of the home seller's payment to Y. Finally, Y does not conduct a broad based fundraising campaign to attract financial support. Rather, most of Y's support comes from home sellers and real estate-related businesses that may benefit from the sale of homes to buyers who receive Y's down payment assistance.

Situation 3 describes a nonprofit corporation formed to combat community deterioration in an economically depressed area that has suffered a major loss of population and jobs. Studies have shown that the average income in the area is below the median level for the State. Z cooperates with government agencies and community groups to develop an overall plan to attract new businesses to the area and to provide stable sources of decent, safe and sanitary

housing for the area residents without relocating them outside the area. As part of the renewal project, Z receives funding from government agencies to build affordable housing units for sale to low and moderate-income families. As a substantial part of its activities, Z makes down payment assistance available to eligible home buyers who wish to purchase the newly-constructed units from Z. Z also offers financial counseling seminars and conducts other educational activities to help prepare potential low and moderate-income home buyers for the responsibility of home ownership.

To fund its down payment assistance program and other activities, Z conducts a broad based fundraising program that attracts gifts, grants and contributions from several foundations, businesses and the general public.

In Situation 1, X's purposes and activities relieve the poor, distressed and underprivileged by enabling low-income individuals and families to obtain decent, safe and sanitary homes. The way X conducts its down payment assistance program establishes that X's primary purpose is to address the needs of its low-income grantees.

By contrast, in Situation 2, Y does not qualify as an organization described in § 501(c)(3). To finance its down payment assistance activities, Y relies on sellers and other real-estate related businesses that stand to benefit from the transactions Y facilitates. Furthermore, in deciding whether to provide assistance to a low-income applicant, Y's grantmaking staff knows the identity of the home seller and may also know the identities of other interested parties and is able to take into account whether the home seller or another interested party is willing to make a payment to Y. Y's receipt of a payment from the home seller corresponding to the amount of the down payment assistance in substantially all of the transactions, and Y's reliance on these payments for most of its funding indicate that the benefit to the home seller is a critical aspect of Y's operations. In this respect, Y is like the organization considered in *Easter House*, which received all of its support from fees charged to adoptive parents, so that the business purpose of the adoption service became its primary goal and overshadowed any educational or charitable purpose. Like the organization considered in *American Campaign Academy*, Y is structured and operated to assist private parties who are affiliated with its funders. Like the organizations considered in *American Campaign Academy*, *Easter House*, and *Columbia Park Recreation Association*, Y also serves an exempt purpose, but because Y is not operated exclusively for exempt purposes, Y does not qualify for exemption from federal income tax as an organization described in § 501(c)(3).

In Situation 3, although Z does not limit its down payment assistance program to low-income recipients, Z's down payment assistance program still serves a charitable purpose described in § 501(c)(3) because it combats community deterioration in a specific, economically depressed area that has suffered a major loss of population and jobs. Through a combination of counseling and financial assistance, Z helps low and moderate-income families in that area to acquire decent, safe and sanitary housing and to prepare for the responsibilities of home ownership. In this respect, Z is like the organization described in Situation 3 of Rev. Rul. 70-585. Because Z is operated exclusively for charitable purposes, Z qualifies for exemption from federal taxation as an organization described in § 501(c)(3).

Rationale and Conclusion:

Based on the information you provided in your application and supporting documentation, we conclude that you are not operated for exempt purposes under section 501(c)(3) of the Code.

An organization cannot be recognized as exempt under section 501(c)(3) unless it shows that it is both organized and operated exclusively for charitable, education, or other exempt purposes. In addition, an organization must establish that it is not organized and operated for the benefit of private interests.

Your board of directors consists of X and Y, husband and wife, who will be compensated in the future based on a percentage of the organization's profits, to a maximum salary of \$ each. As such, it appears that the organization is organized and operated to benefit and further the private interests of these individuals. You have not provided sufficient information to prove that the net earnings of the organization will not inure to these private individuals; and you have not proven that the organization serves a public interest. You have not proven that the salaries are commensurate with work being performed for the organization.

Among other things, the application and supporting documentation must demonstrate conclusively that the organization meets the operational test of section 1.501(c)(3)-1(c) of the regulations. Your information indicates that your primary purpose is to operate a housing program that does not exclusively serve a purpose described in section 501(c)(3).

Charitable purposes include relief of the poor and distressed. See section 1.501(c)(3)-1(d)(2) of the regulations. The organization described in Revenue Ruling 67-138 was recognized as exempt under section 501(c)(3) of the Code because it carried on several activities directed to assisting low-income families in obtaining improved housing, including the purchasing of building sites for resale at cost. You do not sell your homes to low-income individuals at cost; instead, you sell your homes to these individuals at current fair market value as determined by an appraisal. Additionally, to assist individuals in qualifying for a conventional loan through a commercial source, you offer the buyer a second mortgage in order to reduce the Loan-to-Value and the principle amount required on the first mortgage.

You do not conduct your housing program in a manner that establishes that your primary purpose is to address the needs of low-income individuals by enabling low-income individuals and families to obtain decent, safe housing. See Revenue Ruling 70-585, Situation 1 and Revenue Ruling 76-408.

The organization described in Situation 2 of Revenue Ruling 70-585 was 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 described in Revenue Ruling 76-408 formed to provide interest-free home repair loans to low-income individuals who were unable to obtain loans elsewhere. You are unlike these two organizations because you require the buyers to obtain their own financing through conventional channels. You state that there are sufficient loan programs available in the conventional and sub-prime sector to provide purchase money financing. Conversely, section 501(c)(3) of the Code requires that the homes for sale to low-income individuals be sold to those individuals who cannot obtain financing through

conventional channels. The fact that a purpose of an organization is to assist low-income families in qualifying for housing under a state housing program is not sufficient to qualify the organization as exempt under section 501(c)(3) of the Code.

You have not demonstrated that your housing program exclusively serves any other exempt purpose, such as combating community deterioration and lessening racial tensions. For example, you have not shown that your housing program is designed to attract a mixed-income group of homeowners to a specifically defined geographical area that has a history of racial problems. See Revenue Ruling 70-585, Situation 2 and 3.

Only an insubstantial portion of the activity of an exempt organization may further a nonexempt purpose. As the Supreme Court held in Better Business Bureau of Washington D.C., Inc. v. United States, *supra*, the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. You conduct your operations in a manner that is consistent with a commercial firm seeking to maximize sales of services, rather than in a manner that would be consistent with a charitable or educational organization seeking to serve a charitable class or the public at large. The manner in which you operate your housing program indicates that you facilitate the sales of homes in a manner that is indistinguishable from an ordinary trade or business. To purchase one of your homes, you require that the buyer(s) qualify for a conventional loan and you base the sale price of the home on the appraised current fair market value, as opposed to the cost to acquire and renovate the home. Moreover, operating a trade or business to acquire, renovate, and resell homes is not an inherently charitable activity. Thus, a substantial part of your activities furthers a nonexempt purpose.

You are similar to the organization described in Airlie Foundation, Inc. v. Commissioner, *supra*, due to the commercial manner in which you conduct your activities. You operate for a non-exempt commercial purpose, rather than for a tax-exempt purpose. You acquire and renovate homes in an effort to resell them above cost to low-income individuals who must qualify for a conventional loan. Another indication of your commercial manner is that you do not ensure that the home will be habitable or that the buyer will be able to afford to maintain the home over time. Also, you do not provide oversight or conduct any educational program or other activity to ensure that buyers are purchasing properties that are safe, decent, sanitary, and affordable.

You are similar to Situation 2 in Revenue Ruling 2006-27 based on the facts that you rely on the seller. Specifically, you state that X will provide a % down payment assistant loan that will be forgiven if the purchaser stays in the house for years. Furthermore, in deciding whether to provide assistance to a low-income applicant, it is clear that you know the identity of the home seller and you also know the identities of other interested parties. You are not similar to either Situation 1 or Situation 3 in Revenue Ruling 20. In these situations, the organization limited its assistance solely to low-income individuals and provided educational programs to assist the purchasers in maintaining the housing. These organizations also provided funding for its down payment assistance programs through a broad based fundraising program that attracts gifts, grants and contributions from several foundations, businesses and the general public.

The fact that you do not operate in a charitable manner is evident in the information that you provided for the proposed transaction of the Street property. You state that you hope to acquire

the property, rehab the property and, including selling expenses, have approximately \$ invested in the property. You anticipate that the appraised value of the property after rehab, and the expected sales price to be \$. This will provide a profit of approximately \$43,000. You expect the buyer to acquire a traditional first mortgage in the amount of \$, and you will provide a grant for you will take back a second mortgage in the amount of \$, and you will provide a grant for down payment assistance in the amount of \$ which will be forgiven after 10 years of occupancy.

It is concluded that this transaction will not be done in a charitable manner based on the following: The purchaser will be required to obtain their own financing through conventional channels, the home will be purchased at fair market value allowing you to realize a substantial profit on the sale, you will not ensure that the purchaser will be able to afford to maintain the home over time, and you will not provide any educational programs to the buyer.

Another indication of your substantial nonexempt purpose is your lack of public support. You are not supported by contributions from the general public, government or private foundation grants. Based on your response of January 20, approximately % of your income will be derived from the sale of capital assets, with less than % be derived from gifts, grants and contributions. Therefore, substantially all of your revenue is expected to come from the sale of the properties. That your primary activity is to promote and to further your private business interests is reflected in the way that you conduct the sale of the properties. In this respect you are similar to the organization described in Easter House, supra, which derived most of its support from fees it charged for its adoption services. In this case, the court stated that the substantial fees were not incidental to the organization's exempt purpose because they were designed to make a profit. Facilitating home sales, like running an adoption service, is not an inherently charitable activity, and receiving support primarily from the sale of homes is indicative of your commercial purpose.

Based on the facts and information submitted, you are not operated exclusively for exempt purposes. You have not established that your activities exclusively serve a charitable purpose or any other purpose defined in section 501(c)(3) of the Code, and your proposed operations further a substantially nonexempt business purpose. Therefore, you are not described in section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about

representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

US Mail:

Street Address:

ATT:

Room:

ATT:

Room:

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements