

Internal Revenue Service

Appeals Office
2525 Capitol Street, Suite 201, MS 55204
Fresno, CA 93721

Department of the Treasury

Taxpayer Identification Number:

Release Number: **201307014**

Release Date: 2/15/2013

Date: November 19, 2012

Person to Contact:

Tax Period(s) Ended:
December 31, 2010

A

B

UIL: 501.32-00, 501.33-00

Dear

We considered your appeal of the adverse action proposed by the Director, Exempt Organizations, Rulings and Agreements. This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in section 501(c)(3) of the Code.

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

You have not demonstrated that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code § 501(c)(3) and Treasury Regulations § 1.501(c)(3)-1(d). You do not engage primarily in activities that accomplish one or more of the exempt purposes specified in Internal Revenue Code § 501(c)(3). Your primary activity is the operation of a commercial business, which does not have an exempt purpose. You do not lessen the burdens of government.

Your net earnings inure to the benefit of private shareholders and individuals, which is prohibited by Internal Revenue Code § 501(c)(3).

You are operated for a substantial private purpose rather than a public purpose, which is prohibited by Internal Revenue Code § 501(c)(3) and Treasury Regulations § 1.501(c)(3)-1(d)(1)(ii).

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

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

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

Please show your employer identification number on all returns you file and in all correspondence with Internal Revenue Service.

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 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 matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

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.

Sincerely Yours,

Appeals Team Manager
Karen A. Skinder

Enclosure: Publication 892



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date:

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B= date

E= state

F= county

J = individual

K= individual

L = individual

M = individual

N = individual

UILs:

501.32-00

501.33-00

501.36-01

501.45-00

534.00-00

Dear

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

Issue

Do you qualify for recognition of tax exemption under section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

You incorporated on B under the non-profit laws of the state of E. Your Articles of Incorporation ("Articles") state you are organized and operated exclusively for section 501(c)(3) purposes. Your Articles also state that the specific purpose for which you are organized is to support homeowners in F, E who have fallen on hard times and are in need of financial assistance.

You exclusively engage in purchasing houses from homeowners who have become delinquent on their mortgage and selling the purchased house back to the homeowner via a land sale contract (hereafter, "Program"). You solicit applications from homeowners who face foreclosure and want to keep their house. Solicitations are conducted via

mailing campaigns and local news media. You interview potential candidates and check references of each potential candidate. You did not detail the contents of the interviews and reference checks. You select the homeowners for your Program on a case-by-case basis. It may be a loss of work due to no fault of the homeowner, a medical condition that has consumed finances, a death in the family, accident or fraud, or any other unforeseen circumstance that has caused the individual and his/her family to be victimized and faced with not being able to pay their mortgage and lose their home.

However, regardless of the causes, a candidate must meet the following defined requirements in order to be eligible for Program:

- The applicant is a U.S. citizen, 18 years of age or older, and a resident of F.
- The applicant does not own any other form of real estate and does not have other types of assets that could be sold to help their situation.
- The applicant is financially in trouble.
- The house is a primary residence.

There is no income or asset limit to be eligible for Program. The Program is available to any homeowner who cannot afford to pay their mortgage but can afford to pay for food, medical bills, automobile payment, utility bills, and so forth. You expect the range of the house purchase price to be between \$120,000 and \$150,000. You will not initially purchase houses where the homeowner could sell the home with a profit after paying the mortgage, closing costs, realtor fees, and other expenses related to the sale of the home. The homeowner must attempt to sell on their own before becoming eligible. You require all candidates to first work with their mortgage company on the appropriate payment extensions or monthly reductions and local governments for assistance before you finalize your selection.

Upon selection of a homeowner into your Program, they will obtain payoff information from their lender to work with a real estate agent or appraiser to determine the equity in the home. If the house can be sold without cost to the homeowner, they must try an open market sale first. If you decide to initiate buying the house, you first negotiate a sales price with the lender, essentially short selling the home to get the best possible price on the home. The negotiated short sale price is the amount that you pay for the house. All payments are in cash, raised through fund raising and donations - you do not mortgage the house you purchase. Once you purchase the home, you then turn around and sell the home back to the original homeowner via a land sale contract. The price of the house when sold back via the contract is the lower of the original payoff amount or the appraised value of the house. You stated that the purpose of the land contract is to provide the homeowner with an option to buy their home back at the amount of the payoff on their original mortgage. The proceeds incurred by the lower payoff amount as a result of your negotiation with the lender are used for operating expenses. The terms of the land contract will vary from client to client; however, you intend to make the installment payments significantly less than their previous mortgage payments in order to allow them

time to get back on their feet. Payments will be reflective of market conditions and given interest rates. The payments made by clients are held in what you define as a custodial account - for application to their particular account. The sample copy of the land sale contract includes a section for interest charged on the unpaid balance. You did not provide the rate of interest you charge, but scenarios you outlined show interest rates between % and a down payment at % of purchase price. You will work closely with a local network of charitable organizations for referrals, and to help your clients with other needs, including assistance with utilities, food, clothing and counseling. You also will market this Program through announcements, local press releases and networking. You aim to get as much free press through local newspapers and television as possible.

If your client does not want to exercise his/her right to fulfill the land contract, you sell the house on the open market and the homeowner has 30 days to vacate the property. In case your client cannot fulfill the land sale contract, you evaluate the client's situation and the contract again, and you may give an extension of time to the family. You did not provide information regarding how you evaluate the client's situation and the contract or when the extension is due. In the event that the client still cannot fulfill the contract after the reevaluation and extension, you sell the house at the market price and return any client's payments held in their custodial account.

You have five board members, J, K, L, M, and N. Your president, J, is a licensed realtor in the state of F, and is married to K. He will act as a listing agent for you allowing him to control the commission paid for the sale of the property, as well as ensuring exposure for a quick sale and keeping costs down. You state that he may reduce expenses through an adjustable commission rate as the selling or buying agent. N is a loan officer with a mortgage company, he may work with your clients when they are ready to fulfill their land contract and purchase the house back. You state that he is able to qualify them for the best available loan package and keep their costs to a minimum. M is a lawyer at a law firm. You will use her practice for your legal and real estate issues and you will refer your clients to her. We asked you to provide your board minutes from inception to the current time; however, you provided only one set of board minutes dated around one year after you formed. The board discussed your website, bank account, and fundraising in the meeting. The board minutes do not show who participated.

Law

Section 501(a) of the Code provides that an organization described in section 501(c)(3) shall be exempt from taxation.

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more such exempt purposes specified in

section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides an applicant organization must establish it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable," is used in section 501(c)(3) in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged.

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a non-profit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit with films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling and, if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, holding the funds in a trust account and disbursing the funds on a partial payment basis to the creditors. The organization neither charged fees for counseling services nor prorated their services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization's budget plans, for its support. Creditors were not required to make such contributions as a condition of participation.

The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (1945), the Supreme Court held that 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."

In Leon A. Beehly v. Commissioner, 35 T.C. 490 (1960), the court provided that where an exempt organization engages in a transaction with a related interest, and there is a purpose to benefit the private interest rather than the organization, exemption may be lost even though the transaction ultimately proves profitable for the exempt organization. The test is not ultimate profit or loss but whether, at every stage of the transaction, those controlling the organization guarded its interests and dealt with related parties at arm's-length.

In American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962), the Court considered an organization that provided analyses of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The court noted that education is a broad concept, and assumed *arguendo* that the organization had an educational purpose. However, the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was indicative of a business. Therefore, the court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose, and was not entitled to be regarded as exempt.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." Finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

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, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the Claims 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 non-exempt 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.

In *International Postgraduate Medical Foundation v. Commissioner*, TCM 1989-36 (1989), the Tax Court considered the qualification for exemption under section 501(c)(3) of the Code of a non-profit corporation that conducted continuing medical education tours. The petitioner had three trustees. Mr. Helin, who was a shareholder and the president of H & C Tours, a for-profit travel agency. Mr. Regan, an attorney, and a third director who was ill and did not participate. Mr. Helin served as executive director. The petitioner shared offices with H & C Tours. The petitioner used H & C Tours exclusively for all travel arrangements. The petitioner's contract with H & C Tours permitted it to acquire competitive bids, but provided that H & C Tours would always get the bid if it was within 2.5%. There is no evidence that the petitioner ever sought a competitive bid. The Court found that a substantial purpose of the petitioner was benefiting the for-profit travel agency. It concluded that:

When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) even if it furthers other exempt purposes.

We find that a substantial purpose of petitioner's operations was to increase the income of H & C Tours. H & C Tours benefits from the distribution and production of brochures which solicit customers for tours arranged by H & C Tours. Approximately 90 percent of petitioner's total revenue for 1977 was expended on production and distribution of brochures. The terms of the Travel Service and Administrative Support Agreement further insured that H & C Tours would substantially benefit from petitioner's operations. Petitioner did not solicit competitive bids from any travel agency other than H & C Tours.

In *Living Faith, Inc. v. Commissioner*, 950 F.2d 365 (1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under section 501(c)(3) of the Code because the organization was operated for a substantial non-exempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In *KJ's Fund Raisers, Inc. v. Commissioner*, T.C. Memo 1997-424 (1997), affirmed 82 AFTR 2d 7092 (1998), the Tax Court found that a gaming organization was not exempt.

While the organization raised money for charitable purposes, it also operated for the substantial benefit of private interests. The organization's founders, Kristine Hurd and James Gould, were the sole owners of a bar, KJ's Place. The organization, through the owners and employees of KJ's Place, sold lottery tickets exclusively at KJ's Place during regular business hours. While in KJ's Place, the lottery ticket purchasers were sold beverages. The initial directors were Hurd, Gould, and a related individual. The initial board was replaced several times until Hurd and Gould were no longer on the board. At all times Hurd and Gould were the organization's officers. Salaries had been paid to Hurd and Gould and rent had been paid to KJ's Place. The organization maintained that the fact that salaries and rent were no longer paid in this fashion indicated the independence of the board. The Court took another view: "Although those practices ceased and are not an issue here, the current board of directors is composed of at least the majority of the same members who allowed those amounts to be paid." This strongly suggests that Hurd and Gould are free to set policy for their own benefit without objection from the board. Nothing in the record since July 1, 1994, indicates otherwise.

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

Application of Law

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. You are organized for a substantial commercial purpose; operate in a commercial manner and for the benefit of private interests. Further details for this conclusion are set forth below.

Operational Test

To satisfy the operational test, an organization must establish that it is operated exclusively for one or more exempt purposes by engaging primarily in activities specified in section 501(c)(3) of the Code and Section 1.501(c)(3)-1(c)(1) of the regulations. The purpose, not the nature of the activities themselves, is ultimately dispositive of the organization's right to be classified as a section 501(c)(3) organization. See B.S.W. Group, Inc. v. Commissioner, above. Your activities are not directed toward one or more exempt purposes. Your activities primarily further the substantial non-exempt purpose of conducting real estate business evidenced by your buying and selling activities, including those on the open market. Thus, you have failed to establish that you are operated exclusively for one or more exempt purposes.

You Are Not Operated Exclusively for Charitable Purposes

You failed to show that your activity is charitable since you do not limit your Program to the poor, distressed or under privileged. See Section 1.501(c)(3)-1(d)(2) of the regulations. Rather, your target clientele is a homeowner who faces foreclosure and has a mortgage payoff balance between \$120,000 and \$150,000. Thus, you are unlike the organizations described in Rev. Rul. 69-441, above, which aided low-income individuals and families who have financial problems, and relieved the poor and distressed. Purchasing a home from the lender in a short sale and then either reselling the house back to the original homeowners in a land sale contract or selling the home on the open market does not provide relief to the poor and distressed within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations or serve any other purpose recognized as charitable.

You Have a Substantial Non-exempt Purpose

Your primary purpose is conducting a real estate business. You exclusively engage in purchasing houses then reselling them back to original homeowners under different terms. You do not operate exclusively for exempt purposes. See section 1.501(c)(3)-1(c)(1) of the regulations.

Your Form 1023 application and additional information demonstrate that you operate for the substantial non-exempt purpose of buying potentially foreclosed houses and reselling them to the original owners or to the public, which is similar to the commercial real estate business. See, Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), in which the Supreme Court held that 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. In your case, you devote almost all of your time and money to conducting the Program. While your Program may provide an alternative to the homeowners who face foreclosure, you perform essentially the same functions as a commercial real estate agency for the following reasons:

1. You buy and sell houses for profit - the difference between the 'negotiated short selling price' and 'the 'original homeowners mortgage payoff amount';
2. Your land sale contract does not guarantee affordable payments for the original homeowners.
3. Your Program is not equally accessible to the public because your selection criteria and process are such that you select the homeowners

While you offer features that may help homeowners facing foreclosure, such as lower installment payments and the option for homeowners to buy back their houses at the price of their original mortgage payoff, selling a home back to the original homeowner, does not distinguish you from a commercial business. Rather, it puts you in a better position to compete with commercial businesses, as you will have a low-price advantage over your competitors. Through these activities, you directly compete with commercial

real estate business. The court found that an organization that conducts a commercial business and competes with commercial companies does not qualify for exemption under 501(c)(3) in Easter House v. U.S. and Living Faith, Inc. v. Commissioner, above regardless of the organizations' doctrines.

The commerciality doctrine has been relied upon many times by the courts. The classic cases on the commerciality are found in B.S.W. Group, Inc. v. Commissioner and Airlie Foundation v. Commissioner, above. The court concluded in each case that running a consulting service or a conference center was not an exempt activity based upon the commerciality doctrine. The same doctrine is applicable to your Program in terms of profit generation from the operation, pricing methodology and competition with commercial entities. The court in American Institute for Economic Research v. United States, above, applied an even more stringent interpretation. The court held that an educational organization was not entitled to exemption because it conducted the sale of many publications as well as the sale of advice to individuals. You are similar to this organization because you are buying and selling houses to the public, which constitutes a normal trade or business. You are also similar in that your Program has a significant commercial, non-exempt purpose, not incidental to any charitable or educational purposes.

Private Benefits/Inurement

A fundamental requirement for an organization that seeks exemption from federal income taxes is that it benefits the public rather than its creator, shareholders, or persons having a personal or private interest in the activities of the organization. (See section 1.501(c)(3)-1(c)(2) of the regulations.) You have not demonstrated that your structure and manner of operation do not result in private benefit and inurement to J, K, M, and N, as well as their related for-profit businesses in the form of compensation, payments for services and business referrals in accordance with section 1.501(c)(3)-1(d)(1)(ii) of the regulations. L is the only board member who does not receive benefits from your operation; however, your board meeting minutes do not indicate that L exercised her rights in any important decisions such as related party transactions. In fact, you failed to provide any board meeting minutes that show how your board members were initially elected. Regardless, even if L attempted to exercise checks and balances on matters involving a conflict of interest, it would not have been possible because L is an absolute minority on your board in compensation matters. Similar to the organization described in KJ's Fund Raisers, Inc. v. Commissioner, above, even though you have bylaws and a conflict of interest policy, your board members are free to use their own business without objection from the Board.

In International Post Graduate Medical Foundation, above, the Tax Court considered the relationship between another exempt organization and a related for-profit travel agency. The contract was written so as to exclusively favor the for-profit H & C Tours. The relationship created a captive market for the travel agency in the business generated by the exempt organization. Because of this substantial benefit, exemption was denied. Despite your claim that your governing members will provide better services at lower cost, you failed to provide any evidence that your services are better or lower priced. You also

failed to show that you made reasonable efforts for competitive bids or searched for better services and prices. You operate in a similar manner in that contracts with members create captive markets for member businesses and serve to expand the profits of the private businesses owned by those members.

Analogous to the organization described in Leon A. Beeghly Fund v. Commissioner, above, you are formed for the financial gain of your governing members; therefore, inurement occurs because all but one of your board members benefit from the activities that you conduct, regardless of the profitability.

Applicant's Position

You are established to be a last resort opportunity for families in need of charitable assistance. You consider the following steps and eligibility in choosing the candidates for your Program:

- Candidates must exhaust all of the following potential remedies for their financial situation: their township assistance, a mortgage modification with their lenders, and assistance from their family and friends.
- Candidates must attempt to sell their house for at least six months if the value of the house is not less than the outstanding mortgage and selling costs.
- You run an extensive financial and background check on your applicants to ensure that they are not financially capable of making mortgage payments. In addition, candidates must certify that they have less than \$2,000 in cash and cash equivalents, are not entitled to inheritance or injury claim, and own vehicles valued over \$5,000.
- Candidates' household income must not have current income in excess of 10 percent above the Census Bureau Median Family Income by Family Size in E.
- You shall not approve any applicants who are related to your board members.

Service's Response to Applicant's Position

While you have many requirements in order to be eligible for your home purchase Program, none of your requirements limits your Program to the poor or distressed. Further, your services and pricing are not charitable. As a result, you have failed to establish that your Program is charitable within the meaning of 501(c)(3) and that your Program does not provide private benefits to a non-charitable class. Finally, your activities result in private benefit and inurement to the members of your board and certain Program participants.

Conclusion

Based on the facts presented above, it is evident your Program is operated in a commercial, rather than charitable, manner. You do not limit services to a poor or distressed class and you did not demonstrate your pricing was below cost. You have not shown how your operations do not result in inurement to your board as well as their

related businesses. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code or under any other section of the Internal Revenue Code, and you must file federal income tax returns.

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 the 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*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation 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. You can find more information about representation in 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 file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

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. 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:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may 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 Lerner
Director, Exempt Organizations

Enclosure: Publication 892