



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: JAN 19 2007

Number: 201428023

Release Date: 7/11/2014

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.33-00; 501.36-01; 534.00-00

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.

Since 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 30 days of this letter, unless you request an extension of time to file.

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, you should 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.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

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,

A handwritten signature in black ink, appearing to read "Lois G. Lerner". The signature is fluid and cursive, with the first name "Lois" being the most prominent.

Lois G. Lerner
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: **November 30, 2006**

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M = Organization

State = State of Incorporation

Date = Date of Incorporation

A = Director

B = Director

C = Director

R = Educational Institution

S = Lending Institution

UIL Nos: 501.33-00
501.36-01
534.00-00

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.

You, M, are a State nonprofit organization, formed on Date. Your Articles of Incorporation state that you are organized exclusively for charitable and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code. Furthermore, you state that you will act and operate as a charitable organization in lessening the burdens of government, providing relief of the poor and distressed or under-privileged, and promoting social welfare by reducing unemployment.

Your Articles of Incorporation provide that upon dissolution of the organization, the assets shall be distributed to another organization organized and operating for the same purposes for which the Corporation is organized and operating, or to one or more corporations, funds, or foundations organized and operating exclusively for religious, charitable, scientific, literary, or educational purposes, provided however, that any such recipient organization or organizations shall at the time qualify as exempt from taxation under the provisions of Section 501(a) of the

Internal Revenue Code of 1986, as an organization described in Section 510(c)(3) of the Internal Revenue Code of 1986.

Your application Form 1023 states that you were formed primarily to provide home-ownership to low and moderate income families and first-time homebuyers who qualify for mortgages backed by the Federal Housing Administration and other government entities. You state that you will conduct the following programs:

1. **Gift Funds Program.** In this program, you will advance, as a gift to the homebuyer, an amount equal to the down-payment required to purchase the home. This is typically 3% of the purchase price. You will in turn seek sellers who are willing to advance 3.5% of the purchase price of the home to you. All monies received from the sellers will be used to advance down payments to the homebuyers and to administer the program. You anticipate substantial donations from the general public and from government agencies in addition to those funds that will emanate from participating sellers. The funds will be gifted to low to moderate income families (as those terms are used and defined in applicable HUD regulations) and will not require the payment of any funds by the homebuyer to you.
2. **Secondary Financing Program.** In this program, you will make low-interest loans to low to moderate income families that require more funds than are available through the Gift Funds Program. You state you do not anticipate providing this program during the first two years of operations. You do not provide any additional details regarding this program, nor do you indicate how the interest rate will be calculated.

You state that your principal activity will be the provision of down payments for qualified purchasers of residential premises. You will also provide assistance to purchasers of residential premises; and you will provide assistance to purchasers in preparing documents related to obtaining financing for purchase of a residence. You will identify buyers and sellers for your program by conducting seminars and advertising. You state that there are no income limits to participate in your program; and that you will not require participants to use any particular loan program. Your only requirement is that the loan program pursued by the home buyer must allow the down payment to come from you and not from the borrower. Appropriate real estate prices will be determined through consultation with appraisers, real estate brokers, mortgagors and other professionals having expert knowledge of home values in the community. Participants in the program are chosen on a first-come, first-served basis; and the only requirement is that they qualify for a mortgage under HUD guidelines for credit and debt-to-income ratios. You state that you have not yet prepared any application forms or other such materials. You have not prepared any brochures or other informational material which set forth matters pertaining to your procedures or policy guidelines.

In your application, you state that you will advance to the homebuyer, an amount equal to the down payment required to purchase the home. You state that this is typically 3% of the purchase price of the home. You also state that you will seek sellers who are willing to advance 3.5% of the purchase price of the home to you. This money will be used to advance down payments to the homebuyers and administer the program. Although this information implies that you will charge a .5% fee to the seller of the home, your response dated October 21, 2005

states that, "in addition to a contribution equal to 3% of the home sale price, each home seller will be required to pay a fee to the company in the amount of \$350.00 to reasonably compensate the Company for the services which it provides."

In your response dated October 21, 2005 you state that you expect "to receive donations from the seller upon conclusions of each house sale transaction." You have implied that the seller's contribution will always be contingent upon the conclusion of the sale of the seller's home to the buyer who will be the beneficiary of your financial assistance program; that the seller's contribution will be paid at the time of sale closing; and that the contribution will be refunded to the seller if the sale is rescinded.

Prior to, during and following the closing of the sale, your representatives will remain available to assist and provide relevant information to prospective home purchasers. Although you state that you will identify participants in the program through seminars; you state that you do not provide seminars or home ownership classes of your own. Instead, you refer individuals to R, a State non-profit corporation. You state that all participants in your program are eligible to attend R's home ownership counseling classes. You also state that you do not plan to require home owners to participate in classes or other counseling.

You state that there will be 3 Directors for the organization. Two of the directors, A and B, will be paid \$40,000 annually each, and the third director, C, will be paid \$10,000 annually. This will be paid in the capacity of officers of the organization. Based on the financial information provided on Form 1023, you anticipate paying compensation to officers, directors and trustees \$120,000 for the first two years of operations. You also state that the officers expect to devote 30% to 50% of their work time to the organization's home assistance programs.

You state that A is an associate broker for a real estate company. You state that this real estate company may serve as a broker in home sales involved in your home assistance program. B is a Lending Clerk/Closer and is the spouse of a member and co-owner of S, a private mortgage lender licensed to engage in the business of residential real estate financing in State. You state that S may be one of the lending institutions, which participates in your home assistance program.

You state that you will be operated exclusively for charitable purposes as that term is used and defined in Internal Revenue Code ("IRC") section 501(c)(3). Specifically you state that you provide home ownership opportunities to the working poor or to other persons who are either underprivileged or distressed. While your activities will benefit and aid moderate-income families, you will conduct your activities in compliance with the safe-harbor provisions of Revenue Procedure 96-32, 1996-1, C.B. 717. You indicate that the company's activities will also lessen the burdens of government as they relate to providing homes for the working poor, or to persons who are either underprivileged, distressed, or otherwise unable to afford to own a home.

You state that the Department of Housing and Urban Development (HUD) has specifically and objectively set forth and manifested in its mission statement that its mission is to provide "a decent, safe, and sanitary home and suitable living environment for every American." It also set forth in the same statement goals such as "increasing affordable housing and home ownership."

In its letter dated September 16, 1996, HUD described organizations that participate in the activities set forth in its rules and regulations as its "active partners" with the Federal Housing Authority in developing affordable housing. Additionally, you quote the House of Representative Committee Report stating "The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require housing and production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and suitable living environment for every American."

You also state that the organization will operate in accordance with the safe-harbor provisions set forth in Revenue Procedure 96-32.

You anticipate income from gifts, grants and contributions of \$370,000 and \$463,500 for the first and second years of operations, respectively. You anticipate income from gross receipts from admissions, sales of merchandise or services of \$300,000 and \$375,000 for the first and second years of operations, respectively. Based on these figures, 55% of your annual income will be from donations, and 45% will be from services provided in the form of down payment assistance fees. You anticipate contributions paid out, in the form of your Gift Fund Program to be \$400,000 and \$470,000 for the first and second years of operations, respectively. You have not submitted any information regarding fundraising or how you will go about getting donations. You have not submitted any solicitation materials.

The manner in which you operate is referred to as "seller-funded downpayment assistance" in the Final Report: An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations, commissioned by Office of Housing, United States Department of Housing and Urban Development, HUD Contract No.:C-OPC-22550/M0001 (March 1, 2005). The report concludes that seller-funded down payment assistance for mortgage down payments has led to underwriting problems that require immediate attention. Furthermore, the report concludes that the effective cost of homeownership is increased even more by the processing fees charged by the seller-funded down payment assistance providers which get passed through to borrowers in higher property prices. A copy of the report is enclosed with this determination letter.

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(b)(4) of the Income Tax Regulations states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to a State or local government, for a public purpose, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another

organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

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 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.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the court held that an organization that operated a school to train individuals for careers as political campaign professionals, but that could not establish that it operated on a nonpartisan basis, did not exclusively serve purposes described in section 501(c)(3) of the Code because it also served private interests more than incidentally. The court found that the organization was created and funded by persons affiliated with Republican Party entities and that most of the organization's graduates worked in campaigns for Republican candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting Republican 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 section 1.501(c)(3)-1(d)(1)(ii) of the regulations. The court concluded by stating that even if the Republican 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."

In Aid to Artisans, Inc. v. Commissioner, 71 T.C. 202 (1978), the court held an organization that marketed handicrafts made by disadvantaged artisans through museums and other non-profit organizations and shops be operated for exclusively charitable purposes within the meaning of section 501(c)(3) of the Code. 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 the Bureau of Indian Affairs or other government agencies. The organization marketed only handicrafts it purchased in bulk from these communities of craftsmen. It did not select individual craftsmen based on the needs of the purchasers. The court concluded that the overall purpose of the activity was to benefit disadvantaged communities. The method it 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.

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."

University Medical Resident Services P.C. et al v. Commissioner, T.C. Memo 1996-251, states in part that "an organization lessens the burdens of government if 1) the activities undertaken are those that Government considers to be its burden, and 2) those activities actually lessen such burden."

Rev. Rul. 85-1, 1985-1 CB 177 states that in order "to determine whether an activity is a burden of government, the question to be answered is whether there is an objective manifestation by the government that it considers such activity to be part of its burden.... A favorable working relationship between the government and the organization is strong evidence that the organization is actually lessening the burdens of government."

Rev. Rul. 85-2, 1985-1 CB 178 states that "the interrelationship between the governmental unit and the organization may provide evidence that the governmental unit considers the activity to be its burden." The ruling states that the fact the government agency can augment its activities shows that an organization is lessening the burdens of government.

Rev. Rul. 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.

Rev. Rul. 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.

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).

Revenue Procedure 96-32, May 1, 1996, sets forth a safe harbor under which organizations that provide low-income housing will be considered charitable as described in S501(c)(3) of the Internal Revenue Code because they relieve the poor and distressed as described in S1.501(c)(3)-(d)(2) of the Income Tax Regulations. This revenue procedure also describes the facts and circumstances test that will apply to determine whether organizations that fall outside the safe harbor relieve the poor and distressed such that they will be considered charitable organizations described in S501(c)(3). It also clarifies that housing organizations may rely on other charitable purposes to qualify for recognition of exemption from federal income tax as organizations described in S501(c)(3). These other charitable purposes are described in S1.501(c)(3)-(d)(2). This revenue procedure supersedes the application referral described in Notice 93-1, 1993-1 C.B. 290.

This revenue procedure does not alter the standards that have long been applied to determine whether low-income housing organizations qualify for tax-exempt status under S501(c)(3). Rather, it is intended to expedite the consideration of applications for tax-exempt status filed by such organizations by providing a safe harbor and by accumulating relevant information on the existing standards for exemption in a single document. Low-income housing organizations that have ruling or determination letters and have not materially changed their organizations or operations from how they were described in their applications can continue to rely on those letters.

Rationale and Conclusion:

Based on the information you provided in your application and supporting documentation, we conclude that you are not organized or 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.

Among other things, the application and supporting documentation must demonstrate conclusively that the organization meets the organizational test of section 1.501(c)(3)-1(b)(4) of the regulations. Your organizing document states that, in the event of the dissolution of the organization, any organization that is the recipient of your assets must qualify as an

organization described in section 510(c)(3) of the Code. Because this section of the Code does not exist, you have not met the organizational test.

The application and supporting documents must also 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 down payment assistance 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 and Revenue Ruling 67-138. However, you do not conduct your down payment assistance program in a manner that establishes that your primary purpose is to address the needs of low-income grantees by enabling low-income individuals and families to obtain decent, safe housing. See Rev. Rul. 70-585, Situation 1.

Your down payment assistance program does not serve exclusively low-income persons. Instead, your program is open to low and moderate income individuals and to first time home owners in accordance with the safe-harbor guidelines of Revenue Procedure 96-32. This Revenue Procedure specifically states that up to 25% of the residents of a housing project can be moderate income. You have not demonstrated that your down payment assistance program exclusively serves any other exempt purpose such as combating community deterioration and lessening racial tensions. You have not shown that your 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 Rev. Rul. 70-585, Situations 2 and 3. You have failed to establish that your operations will be charitable through the relief of the poor and distressed. While your program may be open to low and moderate-income persons, you have not established that you will meet the safe harbor of Rev. Proc. 96-32 for dealing with "low-income" persons.

Your information indicates that you do not limit your assistance to certain geographic areas or target those areas experiencing deterioration or racial tensions. See Rev. Rul. 70-585, Situation 4. You have indicated that your activities will initially be conducted in the state of State, but that you hope to extend your program to all homebuyers in the United States. Arranging the purchase of homes in a broadly defined metropolitan area does not combat community deterioration within the meaning of section 501(c)(3) of the Code.

Furthermore, you do not directly engage in any activity to ensure that the house will be habitable or that the buyer will be able to afford to maintain the house over time. You rely solely on the mortgage lender, insurance agency, home inspector or other third party to conduct such review. You rely on reputable mortgage lenders to ensure that homebuyers meet your criteria; and you rely on appraisers to ensure that the seller does not inflate the sales price of their home. Other than recommending that the buyer attend a homebuyer education class, you do not provide oversight or directly conduct any educational program or other activity to ensure that buyers are purchasing properties that are safe, decent, sanitary, and affordable. You state that you will provide educational materials to the homebuyers, but that this information has not yet been prepared.

Section 1.501(c)(3)-1(d)(3)(i) states that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community. You do not provide any type of instruction to the public.

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 down payment assistance program indicates that you facilitate the sales of homes in a manner that is indistinguishable from an ordinary trade or business. You operate as a business that provides services to home sellers for which you charge a market rate fee. It is clear that the "contributions" and fees received from the home seller are connected to the sale of their home because you indicate that you will receive the donation from the seller upon the conclusion of each house sale transaction. In this respect you are similar to an organization which was denied exemption because it operated a conference center for a commercial purpose. See Airlie Foundation, Inc. v. U.S., 283 F. Supp. 2d 58 (D.D.C., 2003). Likewise, operating a trade or business of facilitating home sales is not an inherently charitable activity. Thus, a substantial part of your activities further a nonexempt purpose.

You are similar to Situation 2 in Revenue Ruling 2006-27 based on the facts that you rely on sellers and other real-estate related businesses that stand to benefit from the transactions that you facilitate. Specifically, you state that the real estate company that A works for, and S may both be involved in your operations. 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 may also know the identities of other interested parties and are able to take into account whether the home seller or another interested party is willing to make a payment to you. Your receipt of a payment from the home seller corresponding to the amount of the down payment assistance is present in substantially all of the transactions, and your reliance on these payments for a substantial amount of your funding indicates that the benefit to the home seller is a critical aspect of your operations.

Another indication of your substantial nonexempt purpose is your apparent lack of public support. Although you state that you will receive 55% of your revenues from donations, you have not provided any details regarding proposed fundraising plans. There is no indication that you will be supported by contributions from the general public, government or private foundation grants. Primarily all of your revenue is expected to come from the sellers you serve. That your primary activity is to promote and to further your private business interests is reflected in the financing structure of your down payment assistance program. 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 fees charged to home sellers is indicative of your commercial purpose.

Section 1.501(c)(3)-1(e) states that an organization may operate a trade or business provided the organization's primary purpose does not consist of carrying on an unrelated trade or business. Your primary purpose is the facilitation of home sales. This primary purpose is considered operations of a trade or business.

Even if your program would be directed to exclusively low-income individuals, your reliance entirely on home sellers or other real-estate related businesses that stand to benefit from the transactions to finance your down payment assistance activities demonstrates that you are operated for the purpose of benefiting private parties.

You have not yet developed specific policies or grant making procedures. You state that you will receive donations from the home sellers only upon the conclusion of the home sale transaction. However, this only implies that gift funds are only provided to the buyer if a seller has paid a service fee. The sellers will make the payments to you and indirectly to the homebuyer to facilitate the sale of their homes. Upon the closing of the sale, the sellers "service fee" to you is returned to the seller as part of the proceeds the seller receives from the sale of the home.

Your information clearly indicates that you take into account whether there is a home seller willing to make a payment to cover the down payment assistance an applicant has requested. That you receive a payment from the home seller corresponding to the amount of the down payment assistance plus the service fee indicates that the benefit to the home seller is not a mere accident but rather an intended outcome of your operations. In this respect, you are like Easter House, supra, which provided health care to indigent pregnant women, but only when a family willing to adopt a woman's child sponsored the care financially. Similar to American Campaign Academy, supra, you are structured and operated to directly benefit the home sellers who pay for your services. Therefore, a substantial part of your activities serve a private rather than a public interest.

Although you have provided information that HUD and other governmental agencies are concerned with the provision of safe, decent and affordable housing; you have not proven that any government agency considers the provision of down payment assistance to homebuyers to be their burden. In University Medical Resident Services P.C. et al v. Commissioner, T.C. Memo 1996-251, it states that an organization lessens the burdens of government if "1) the activities undertaken are those that Government considers to be its burden, and 2) those activities actually lessen such burden." Rev. Rul. 85-2, 1985-1 CB 178 states that a favorable working relationship between the government and the organization is strong evidence that the organization is actually lessening the burdens of government. Rev. Rul. 85-1, 1985-1 CB 177 states that the interrelationship between the governmental unit and the organization may provide evidence that the governmental unit considers the activity to be its burden. You have not provided any facts or other evidence of an objective manifestation by any government agency that it considers the provision of down payment assistance to be part of their burden. HUD's mission statement states that its mission is to provide "a decent, safe, and sanitary home and suitable living environment for every American" and that their goals include "increasing affordable housing and home ownership", however, there is no indication of any specific activities they are recognizing as their burden or whether such activities were intended to be performed on a normal commercial basis or by a limited group of non-profit organizations. As

such, it cannot be assumed that HUD considers the provision of down payment assistance to homebuyers as their burden. In addition, you have not met many of the other factors that are to be considered when determining whether an organization is lessening the burdens of government. Specifically, you have not shown that you are acting on the government's behalf by freeing up assets that the government would otherwise devote to this activity; you do not have an interrelationship with a government unit; you are not conducting an activity that was previously conducted by a government unit; you do not defray the expenses of a government unit or pay the debts of a government unit; and you do not receive funding from the government unit you claim to be assisting. Because you have not shown that the provision of down payment assistance to homebuyers is a burden of the government, you also have not shown that you are lessening the burdens of government.

Irrespective of whether an organization's activities lessen the burden of government, an organization must still demonstrate that its activities serve a public rather than a private interest. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization must establish that it is not organized and operated for the benefit of private interests. Even if it were determined that your activities were lessening the burdens of government, your reliance entirely on home sellers or other real-estate related businesses that stand to benefit from the transactions to finance your down payment assistance activities demonstrates that you are operated for the purpose of benefiting private parties. This is specifically demonstrated by the fact that you have stated that you may use the services of both the real estate company that A serves as a broker for and the lending institution that B is involved with.

Based on the facts and information submitted, you are not operated exclusively for exempt purposes. You have not established that you activities exclusively serve a charitable class or any other purpose defined in section 501(c)(3). Your proposed operations further a substantial nonexempt business purpose and will further the private interests of home sellers and other private parties. In addition, you have not established that your net earnings will not inure to the benefit of private shareholders or individuals. Therefore, you are not described in section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 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:
Internal Revenue Service
Exempt Organizations
P. O. Box 2508
Cincinnati, OH 45201

Street Address:
Internal Revenue Service
Exempt Organizations
550 Main St, Federal Bldg.
Cincinnati, OH 45202

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