



Department of The Treasury  
Internal Revenue Service  
1100 Commerce Street  
Dallas TX 75242

Date: December 11, 2008

Number: **201452019**  
Release Date: 12/26/2014

Person to Contact:  
Identification Number:  
Contact Telephone Number:  
EIN:  
In Reply Refer to: Internal Revenue Service

**CERTIFIED MAIL**

**LAST DATE FOR FILING A PETITION  
WITH THE UNITED STATES TAX COURT:**

Dear \_\_\_\_\_ :

This is a Final Adverse Determination Letter as to your exempt status under section 501(c) (3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c) (3) of the code is hereby revoked effective January 1<sup>20XX</sup>.

Our adverse determination was made for the following reasons:

A substantial part of your activities consisted of providing down payment assistance to home buyers. To finance the assistance, you relied on home sellers and other real-estate related businesses that stand to benefit from these down payment assistance transactions. Your receipt of a payment from the home seller corresponds to the amount of down payment assistance provided in substantially all your transactions. Therefore, you are operated for a substantial nonexempt purpose. In addition, your operations further the private interests of the persons that finance your activities. Accordingly, you are not operated exclusively for exempt purposes described in section 501(c)(3).

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX and for all years thereafter. Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims or the District Court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> day after the date this determination was

mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment. To secure a petition from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W. Washington, D.C. 20217.

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

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers.

You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling \_\_\_\_\_, or writing to:

Internal Revenue Service  
Taxpayer Advocates Office,

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

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

Sincerely yours,

Vicki L. Hansen  
Acting, Director EO Examinations

**DEPARTMENT OF THE TREASURY**  
Internal Revenue Service  
1100 Commerce Street  
Dallas, TX. 75242

Date: October 27, 2008

Employer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Number:

Telephone:

Fax:

**Certified Mail – Return Receipt Requested**

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c) (3) of the code (Code) and the imposition of income and employment taxes are necessary.

If you accept our findings, please sign the enclosed Form 6018, Consent to Proposed Adverse Action and Form 4549, Income Tax Examination Changes and return them to our office within 30 days of the date of this letter. An envelope has been provided for your convenience.

If you do not agree to our findings and wish to protest, you must submit to us a written request for Appeals consideration within 30 days of the date of this letter. Your protest should include a statement of facts, the applicable law, and argument in support of your position.

An Appeals Officer, who is independent of the Director, EO Examinations, will review your case. . The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

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

You are liable for filing Federal income and employment tax returns for all subsequent years. These returns are to be filed with the appropriate Campus identified in the instructions for those returns.

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

**Taxpayer Advocate**

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

Thank you for your cooperation.

Sincerely,

Vicki L. Hansen  
Acting Director, EO Examinations

Enclosure:  
Publication 892  
Publication 3498  
Report of Examination  
Envelope

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exh bit
Name of taxpayer	Tax Identification Number	Year/Period ended December 31, 20XX

**ISSUE:**

The tax liability of \_\_\_\_\_ under section 11(a) of the Internal Revenue Code.

**FACTS:**

( ) is a not-for-profit corporation incorporated on June 7, 20XX; it also has a certificate of authority to transact business in the State of \_\_\_\_\_. The purpose of \_\_\_\_\_, as stated in the articles of incorporation, is to expand the availability of decent, safe, affordable housing by capitalizing on current opportunities to acquire, rehabilitate, preserve, buy, lease, rent, manage, broker or construct housing units for rent and/or for sale.

On September 7, 20XX, \_\_\_\_\_ applied for recognition as a tax exempt organization under Internal Revenue Code section 501(c)(3) on Form 1023. On January 28, 20XX, based on the information that \_\_\_\_\_ provided in its application for exemption and on the assumption that \_\_\_\_\_ would operate in the manner represented in its application, \_\_\_\_\_ was recognized as of June 7, 20XX, as a tax exempt organization as described in section 501(c)(3).

\_\_\_\_\_ operates a down payment program that provides financial assistance to homebuyers. The amount provided can be used for the down payment, closing costs, outstanding debt or numerous other needs. The funds are generated from payments from builders and sellers. Although \_\_\_\_\_ stated in its application for recognition of exempt status that it also planned to offer interim or specialized housing for the elderly or handicapped, it did not engage in that activity.

The Service conducted an examination of \_\_\_\_\_ Form 990, Return of Organization Exempt from Income Tax, for the tax year ended December 31, 20XX. Based on the examination conducted, it was concluded that \_\_\_\_\_ no longer qualified for exemption from Federal income tax. That conclusion was reached, in part, for the following reasons:

- \_\_\_\_\_ does not exclusively serve an exempt purpose described in section 501(c)(3);
- \_\_\_\_\_ provides substantial private benefit to persons who do not belong to a charitable class;
- \_\_\_\_\_ down payment gift program does not limit assistance to certain geographic areas or target those areas experiencing deterioration or neighborhood tensions.
- The transactions of \_\_\_\_\_, the sellers, and buyers result in a circular flow of the money. The sellers make payments to \_\_\_\_\_; \_\_\_\_\_ provides the funds to buyers; the buyers use the funds to make the down payment necessary to purchase homes from the sellers.

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exh bit
Name of taxpayer	Tax Identification Number	Year/Period ended December 31, 20XX

On October 25, 20XX, as a result of the examination of form 990 return, the Service issued a 30 day letter (Letter 3618) proposing revocation of tax exempt status.

          appealed the Service's proposed revocation to the Office of Appeals.

**LAW:**

Section 11(a) of the Code imposes a tax for each taxable year on the taxable income of every corporation.

Section 61(a) of the Code provides that, except as otherwise provided, gross income means all income from whatever source derived.

Section 162(a) of the Code provides that there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

Section 1.11-1(a) of the Federal Tax Regulations (Regs.) provides that every corporation, foreign or domestic, is liable to the tax imposed under section 11 except:

- (1) corporations specifically excepted under such section from such tax:
- (2) corporations expressly exempt from all taxation under subtitle A of the Code (see section 501); and
- (3) corporations subject to tax under section 511(a).

Regs. section 1.61-1(a) provides that gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, stock, or other property, as well as in cash.

Regs. section 1.61-3(a) provides that in a manufacturing, merchandising, or mining business, "gross income" means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources.

Regs. section 1.162-1(a) provides that business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business.

Regs. section 1.6012-2(a)(1) provides that, except as provided, every corporation subject to taxation under subtitle A of the Code shall make a return of income regardless of whether it has taxable income or regardless of the amount of its gross income.

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or ex bit
Name of taxpayer	Tax Identification Number	Year/Period ended December 31, 20XX

Regs. section 1.6012-2(a)(3) provides that the return required of a corporation under this section shall be made on Form 1120 unless the corporation is of a type for which a special form is prescribed.

**IRS POSITION:**

Based on the letter referenced above, from the Service to , dated October 25, 20XX, is no longer recognized as exempt from Federal income tax as an organization described in section 501(c)(3) of the Code. The revocation of tax exempt status is effective as of January 1, 20XX.

For the tax year ended December 31, 20XX, is a taxable corporation. As such, is liable for the tax imposed by section 11(a) of the Code; and is required to file Form 1120, U.S. Corporation Income Tax Return, for the tax years ended December 31, 20XX, pursuant to Regs. section 1.6012-2(a)(1) and (3).

That statutory period for the limitation of time to assess tax owed by under section 11(a) of the Code expires on January 31, 20XX. Therefore, pursuant to section 6212(a) of the Code, the Service is sending a notice of deficiency to with respect to the tax imposed by section 11(a).

In computing the amount of tax due by under section 11(a) of the Code, the Service converted the amounts reported as revenue and expenses on Form 990 return for the tax year ended December 31, 20XX to income and deductions on Form 1120 return for the tax year ended December 31, 20XX. The adjustments to convert Form 990 return to Form 1120 return are summarized on the enclosed Form 4549, Income Tax Examination Changes.

All revenues reported on Form 990 return were treated as income pursuant to section 61(a) of the Code; and Regs. sections 1.61-1(a) and -3(a). See line items 1a-e, adjustments to income, on Form 4549.

All expenses reported on Form 990 return were treated as ordinary and necessary expenses and allowed as deductions from income pursuant to section 61(a) of the Code; and Regs. section 1.162-1(a). See line items 1f-g, adjustments to income, Form 4549.

**TAXPAYER POSITION:**

The issuance of a Notice of Deficiency, along with projected tax liabilities, was discussed with an officer of