



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **200704041**  
Release Date: 1/26/07  
Date: October 30, 2006

Uniform Issue List: 501.00-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

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

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3).

We made this determination for the following reason(s):

You have failed to establish that you will be operated exclusively for purposes as described in section 501(c)(3) of the Code. Your proposed operations will further private interests, including the interests of home seller, because they are designed to facilitate the sales of homes. Your primary purpose consists of carrying on an unrelated trade or business. More than an insubstantial part of your proposed activities will further a substantial nonexempt purpose. Finally, your description of your proposed operations, which has been inconsistent and which has consisted of vague representations and generalizations, is insufficient to establish that you will operate exclusively for purposes described in section 501(c)(3) of the Code.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91<sup>st</sup> day after the date that we mailed this letter to you. Contact the clerk of the appropriate

court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code section 7428 does not stay the requirement to file returns and pay taxes.

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.

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,

Lois G. Lerner  
Director, Exempt Organizations  
Rulings & Agreements

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



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: 07/14/05

Contact Person:

Identification Number:

Uniform Issue List: 501.00-00

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M =

State =

Date =

Dear :

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

Facts:

You are a State Nonprofit Corporation formed on Date. Your Articles of Incorporation state that you are organized to operate exclusively for charitable, educational and scientific purposes. Your bylaws state that your purposes are to:

1. Provide down payment assistance to persons purchasing a home and who qualify for loans in accordance with HUD guidelines.
2. Provide education and related materials directly to persons who are purchasing homes; and
3. Distribute information and materials to persons who are purchasing homes.

Your Form 1023 Application provides that you will be engaged in the following activities: (1) providing gifts of grants to people who qualify for homes priced within HUD guidelines, comprising 50% of your time; and (2) soliciting contributions by builders and home owners to participate in your down payment assistance program, which will comprise 50% of your time.

In your letter of August 24, 2003, you stated that you are committed to creating home ownership opportunities for low to middle income families and will utilize a comprehensive communication strategy of home buying seminars, presentations, direct mail, newspapers, paid advertisements and public service announcements to market your down payment assistance program. You will also offer seminars to the general public, realtors and other professionals on the benefits of your program and the resources available to qualified buyers.

In your letter of August 24, 2003, you stated that you are not involved in the direct solicitation of buyers or sellers. Instead you will focus on educating realtors, lawyers, accountants and other advisors on the benefits of the program and to market your program. You state that these professionals will assist buyers and sellers to determine if your program is advantageous for their respective transactions. Your most current seller brochure describes how your program will assist a seller in decreasing sales time, increasing the buying pool and over all, achieve the maximum sales price for their home by not having to reduce the sales price of their home. Similarly, your most current realtor brochure describes how your program will help a realtor grow their business by increasing sales.

You also indicated that you will not be involved in any aspect of the home sale, except for the provision of down payment assistance, which will consist of providing the agreement forms to participants, archiving documents used in the transactions, transferring funds to lender at closing. Contracting with sellers and negotiating the home sales will be the responsibility of the other professionals. In addition, you will be involved in limited follow-up services and you will provide documentation of your nonprofit status to entities that provide gifts to you.

Your "Policy for Applicant Assistance" submitted with your application states that you will provide buyers up to 3% of a home's sale price as down payment assistance to very low-income, low-income and moderate-income households. In your letter of May 6, 2002, you stated that you do not have any restrictions or limitations on who may apply to your organization for assistance, except that all grantees must not exceed 120% of the HUD established median income and the buyer must qualify for a mortgage loan that allows gift assistance. After several discussions with your representatives, you modified this aspect of your program and stated in your letter of March 10, 2005, that you will limit participation to only those applicants that meet the HUD criteria for low and very-low income and will not include those that fall within the median income levels.

In your letters of August 24, 2003, and December 10, 2003 you stated that you do not screen an applicant's ability to pay the mortgage and other costs associated with homeownership. You will rely on participating mortgagors to financially qualify potential recipients. You state that such activity is the responsibility and at the sole discretion of the lender or local government agencies. Applications of potential recipients are forwarded to you by the participating mortgagors. In your letter of March 10, 2005, you state that services such as home inspections are outsourced to an independent company and reported to the lender and realtor. Similarly, you state that home warranties are the responsibility of the realtor.

Your amended down payment assistance application form, submitted with your letter of March 10, 2005 is a one-page form that requests a prospective buyer to provide information about current employment, whether down payment assistance funds have been received before and name and address of seller, lender, closing agent, etc. You state that you request that the Lender complete a "verification form," which asks the lender to verify the information provided on the down payment assistance application form. Your designated agent will review all materials and verify that the information is correct. You represented in your letter of March 10, 2005 that you will then have a designated committee review the information and make funding available on a first come, first serve basis, but only after an independent appraisal has been performed and is found to be acceptable by the lending institution and yourself. You stated that a home inspection is outsourced to an independent company, but you could have an "experienced employee" walk through with the independent inspector prior to approval.

You state that you will provide assistance regardless of contributions received from interested persons since any gift is based on availability of funds and whether the individual qualifies under the income restrictions. However, financial documents submitted with your letter of March 10, 2005, indicate that your primary source of funding will be seller or related party contributions.

You ask all participating sellers to sign the Participating Seller Agreement and contribute 3% (less a flat fee of \$650 service fee), of the home's sales price as a contribution, at closing. In your letter of April 16, 2004, you state that by signing the Participating Seller Agreement, a seller registers their property with you. You further state that registration provides a "more expansive market of buyers" for the home and identifies seller as a participant in your program. The 3% amount requested represents the amount that lenders have determined as the amount needed to qualify for a traditional loan.

You state that contributions are not paid in exchange for services. In your letter of March 10, 2005, you modified your Participating Seller Agreement to indicate that a seller's contribution is "voluntary" and not contingent on the sale of the home. However, your current Participating Seller's Agreement continues to provide that the seller is not required to make the contribution or pay the service fee if, the buyer fails to close or if the buyer is not using your down payment assistance program to purchase a home. The Participating Seller Agreement further provides that the service fee and any other contribution by the seller will be returned to the seller without recourse, should the buyer not close on the transaction.

You further state that if a seller contributes more than the down payment assistance provided to a buyer, no funds are returned to the seller since seller contributions are used for gift assistance on future transactions. The Participating Seller Agreement includes a caveat that states that the funds contributed by a particular seller will not be gifted to the buyer of his/her property. The Participating Seller Agreement also states that the service fee is a fee for services and may be treated for income tax reporting purposes by the Seller as: (a) a cost of sale of a property, (b) a charitable contribution of the amount of the amount exceeding any actual value the seller may have received, or (c) a combination of the two.

You state that your endowment of corporate, philanthropic and other public or private organizations will enable you to provide funding of up to 3% of a home's purchase price for qualified buyers. You state that under your program, a seller's contribution is not tied to or associated with your gift to the buyer. As such, you state that you will provide down payment

assistance even if a seller provides a contribution that is less than the gift to the buyer since you will use your endowment to fund the down payment. However, you currently do not have a funded endowment, although you state that you hope to be sustained by corporate and private contributions.

In your Form 1023 Application, you indicated that your largest source of financial support will be donations from builders and sellers of homes. In your letter of May 6, 2002, you stated that you will also be soliciting donations from corporations and real estate professionals. In your letter of August 24, 2003, you stated that your board members will individually approach lending corporations, charitable endowment funds, philanthropists and other private and public funding resources to establish the endowment fund. In your letter of December 10, 2003, you described your charitable solicitation program as including the provision of seminars for corporations, government agencies, foundations and individuals on the housing trends and the economic impact of home ownership. Your donors will be advised quarterly on financial status and the opportunities created by down payment assistance including persons benefiting from your program. However, your current financial statements and projected budget show that your primary source of funding will be from sellers' "voluntary" contributions and service fees with a very limited amount projected to be received through charitable solicitations and expended on fundraising.

You represent that your endowment fund will also be used for homeowner education and follow-up services. In your application Form 1023 and your letters of August 24, 2003, December 10, 2003, and April 16, 2004, you stated that you will not independently sponsor homeowner education seminars, but will be an "active participant" in seminars by partnering with community organizations that provide homeowner education to the general public. However, as noted above, you will be presenting seminars to realtors, mortgage lenders and other third parties on how your down payment assistance program operates and the benefits offered by your program.

In your letter of April 16, 2004, you stated that your homeowner education program will consist of providing each gift recipient with a "Guide for Successful Ownership Program," which includes an information kit entitled "What Every Homeowner Needs to Know." This kit will include information on the basics of home maintenance, budgeting, energy efficiency, insurance and how to access private and government resources. In your letter of March 10, 2005, you described your education program as being group, one-on-one and on-line. You state that you have a goal of providing training within 30 days after closing and plan to make continued training available to gift recipients. You further stated that "some of [your] staff will conduct the education program" and that it will be the responsibility of the staff member to determine if the participant has completed the education program.

In your letter of December 10, 2003, you submitted a follow-up service questionnaire that you will send out to gift recipients. You indicated that you will send each recipient a questionnaire at various time intervals of 3, 6 and 12 months. In your letter of March 10, 2005, you indicated that you will provide a 6-month follow-up with each homeowner using your follow-up questionnaire. You further stated that you will review responses and provide assistance, such as referrals via telephone calls to homeowners. Finally, you represented that in addition to the questionnaire, you intend to provide each homeowner with a fact sheet of resources and 1-800 numbers to assist them with any problems.

In summary, as provided in your letter of March 10, 2005, you modified your down payment assistance program and related activities as follows: your program will provide up to 3% of a home's sales price as down payment assistance only to low or very-low income participants. In order to ensure that only low or very-low persons participate in your program, you will conduct an independent review of application materials. You will base selection on whether funding is available, whether the participant falls within the low or very-low income levels, and the vote of the independent committee. Your independent committee will be composed of those "trained and educated with the system, policies and procedures set forth." Approval of applications will not be based on the identity of or whether a contribution has been made by the seller or other party involved in the sale of the home. The sales price will be negotiated by the buyer and seller, but an independent appraisal must be approved by the lender and reviewed by you before any funds are released. Your Participating Seller Agreement provides that you ask sellers to make a "voluntary" contribution of 3% of the home's sales price including a service fee of                      This contribution will go into the endowment fund, a "pre-existing" pool of                      to be used for the "regular operation of the company," i.e. down payment assistance. The                      service fee will be used to "sustain the operations of the company." In addition, you state that the seller's "voluntary" contribution is not contingent on the sale of the home. However, the seller is not required to make the contribution or pay the service fee if, the buyer fails to close or if a buyer not using your program purchases the house. Your current and projected financials show that your primary source of funding will be from sellers and other parties related to the sales of homes.

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 and Urban Development, HUD Contract No.: C-OPC-22550/M0001 (March 1, 2005). The report concludes that seller-funded downpayment assistance for mortgage downpayments has led to underwriting problems that require immediate attention. Furthermore, the report concludes that the effective costs of homeownership are increased even more by the processing fees charged by the seller-funded downpayment assistance providers which get passed through to borrowers in higher property prices. A copy of the report is enclosed with this determination letter.

#### Applicable 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(c)(1) of the Income Tax Regulations provides that an organization operates exclusively for exempt purposes only 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 or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

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 or 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 materials (e.g., advertising) and the extent to which the organization receives charitable donations.”

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. 72-147, 1972-1 C.B. 147, holds that an organization that provided housing to low income families did not qualify for exemption under section 501(c)(3) of the Code because it gave preference to employees of business operated by the individual who also controlled the organization. Although providing housing for low income families furthers charitable purposes, doing so in a manner that gives preference to employees of the founder's business primarily serves the private interest of the founder rather than a public interest.

#### Rationale and Conclusion:

Based on the information you provided in your application and supporting documentation, we conclude that you are not operated for exempt purposes under section 501(c)(3) of the Code. An organization cannot be recognized as exempt under section 501(c)(3) unless it shows that it is both organized and operated exclusively for charitable, education, or other exempt purposes. Among other things, the application and supporting documentation must demonstrate conclusively that the organization meets the operational test of section 1.501(c)(3)-1(c) of the regulations. Your information indicates that your primary purpose is to operate a 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. 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.

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. For example, 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. Your information indicates that you do not limit your assistance to certain geographic areas or target those areas experiencing deterioration or racial tensions. 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. See Rev. Rul. 70-585, Situation 4.

You rely on an independent inspector's evaluation and do not primarily consider those applications for assistance for homes that meet your particular standards for habitability. You also do not engage in any substantive review of the financial health of applicants to ensure that they will be able to afford to maintain the house over time. Instead, you rely solely on the mortgage lender, insurance agency, home inspector or other third party to conduct such review. While you indicate that you require completion of an education program, and offer literature after the closing, you do not provide oversight or conduct any other activity to ensure that buyers are purchasing properties that are safe, decent, sanitary, and affordable. This distinguishes your situation from that described in Rev. Rul. 67-138.

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 a business that provides services to home sellers for which you charge a market rate fee. For example, your information and literature explains how the seller and agent will benefit from your program as sellers will decrease sales time, increase the buying pool and overall achieve the maximum sales price for their home by not having to reduce the sales price. This type of approach helps to demonstrate that your primary purpose consists of maximizing the fees you derive from facilitating sales of real property. 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., 92 A.F.T.R.2d (RIA) 6206 (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.

Another indication of your substantial nonexempt purpose is your lack of public support. Although you discuss establishing an endowment fund from general contributions, almost all of your revenue comes from the sellers' you serve. Other fundraising efforts appear directed primarily toward lenders, builders, and real estate companies. 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. A review of your financial documents shows that your primary source of support is from sellers' fees and contributions, and businesses which may benefit from the homes sold to the buyers who receive your assistance. 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.

Even though your program is 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.

Your grant making procedures indicate that seller gift funds are only provided if a seller has paid a processing fee or has made a contribution to you. In fact, while you call the funds you will receive from the sellers "voluntary contributions," these transactions are not contributions because they will not "proceed from detached and disinterested generosity." Commissioner v. Duberstein, 363 U.S. 278, 285 (1960). Your characterization of these transactions as contributions ignores the business realities surrounding the payments. The sellers will make the payments to you and indirectly to the homebuyer to facilitate the sale of their homes. In fact, the documents you provided state or lead home sellers to believe that these payments are deductible as charitable contributions and may contribute to tax avoidance. Upon the closing of the sale, the sellers "contribution" to you is returned to seller as part of the proceeds the seller receives from the sale of the home.

These "voluntary contributions" are more appropriately characterized as fees received in exchange for the sale of a service. Your information indicates that your grant making staff is able to take into account whether there is a home seller willing to make a payment to cover the down payment assistance an applicant has requested. The fact that the payment requested from the home seller is the exact amount traditionally needed to qualify for a loan, that you will anticipate receiving a payment from the home seller corresponding to the amount of a down payment assistance in most transactions, and that seller payments are contingent on the sale of a particular property 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.

Based on the facts and information submitted, you are not operated exclusively for exempt purposes. Your proposed operations further a substantial nonexempt business purpose and will further the private interests of home sellers and other private parties. 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 protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section 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 administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

In the event this ruling becomes final, it will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you decide to protest this ruling, your protest statement should be sent to the address shown below:

Internal Revenue Service  
TE/GE Exempt Organizations  
SE:T:EO:RA:T:2  
Attn : Mary Jo Salins  
1111 Constitution Ave, N.W., PE-3P3  
Washington, D.C. 20224

If it is convenient, you may also fax your reply using the fax number shown in the heading of this letter. If you fax your reply, please contact the person whose name and number are shown in the heading of this letter to confirm that your fax was received.

If you do not intend to protest this ruling, and if you agree with our proposed deletions as shown in the letter attached to Notice 437, you do not need to take any further action.

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

Enclosure(s)

Notice 437

*An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations*

HUD Contract No.