



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75424

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

May 16, 2007

Release Number: 200733031
Release Date: 8/17/07

UIL:501.03-01

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: _____

ORG

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 September 1, 20XX.

Our adverse determination was made for the following reasons:

A substantial part of your activities consists of providing down payment assistance to home buyers. To finance the assistance you rely 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 the down payment assistance provided in substantially all of your down payment assistance transactions. The manner in which you operate demonstrates you are operated primarily to further your insiders' business interests. Therefore, you are operated for a substantial nonexempt purpose. In addition, you 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).

You failed to meet the requirements of IRC section 501(c) (3) and Treas. Reg. section 1.501(c) (3) -1(d) in that you failed to establish that you were operated exclusively for an exempt purpose. Rather, you were operated for the benefit of private interests and a part of your net earnings inured to the benefit of outsiders, your founder and board members...

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 August 31, 20YY, 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 in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st 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.

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:

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.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

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

Sincerely yours,

Marsha A. Ramirez
Director, EO Examinations

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended	
ORG	EIN	August 31, 20YY	

ORG = Name of Organization
EIN- TIN or EIN
XYZ – Name of State
ABC Grant – Name of Grant

Addressee 1 – Address of Org
Addressee 2 – 2nd listed Address
Addressee 3 – 3rd Listed Address

Officer 1 - President
Officer 2 – Vice President
Officer 3 - Treasurer

Issue

Whether an organization, whose primary activity is operating a “down-payment assistance” program is operated exclusively for charitable purposes within the meaning of IRC 501(c)(3)?

Facts

Overview

ORG, was recognized as an organization exempt under Section 501(c)(3) of the Internal Revenue Code in February of 20VV. The organization was incorporated under the laws of the State of XYZ as a non-profit corporation on September 17, 19TT.

The purposes of ORG, according to its Articles of Incorporation, are as follows:

1. Organized exclusively for charitable, educational, religious or scientific purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code (or corresponding section of any future Federal tax code).
2. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, directors, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of Section 501(c)(3) purposes. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of the Articles, the Corporation shall not carry on any other activities not permitted to be carried on (1) by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code (or corresponding section of any future Federal tax code) or (2) by a corporation, contributions to which are deductible under Section 170 (c)(2) of the Internal Revenue Code (or corresponding section of any future Federal tax code).
3. Included among the educational and charitable purposes for which the Corporation is organized, as qualified and limited by subparagraphs (a) and (b) of this Article THIRD are the following:
 - a. To assist qualified buyers in the down payment and purchase of homes. The organization will assist qualified buyers with closing costs and down payments in circumstances where they could not otherwise meet such payments and costs through its administration of a down payment assistance program.
 - b. To provide affordable housing and shelter to members of the general public who could not otherwise afford same through the provision of funding and assistance to other non-profit, qualified Section 501 (c)(3) organizations involved in the construction, development and provision of multi and single family dwellings, thereby lessening the burdens of federal, state and local governments.

ORG's mailing address, according to Secretary of State of XYZ website, was Addressee. The website also showed that ORG was not in good standing with the State of XYZ . Internal Revenue Service (IRS) records showed the organization mailing address as Addressee2.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended	
ORG	EIN	August 31, 20YY	

On April 21, 20ZZ, correspondence was sent to the IRS address of record, notifying ORG of an examination of the organization for the tax period ended August 31, 20YY. The Information Document Request (IDR) was to request records to determine how the ORG down payment assistance program operated. No response was received.

Per the Form 990 filed for the prior 20WW year Officer 1 was listed as the organizations President/Executive Director, Officer 2 was listed as Vice President, and Officer 3 as Treasurer. On October 19, 20ZZ, the Internal Revenue Agent contacted each of the above officers. Per a telephone conversation with Mr. Officer 1, he indicated that he had not worked for ORG since 2001/20WW year. He also indicated that ORG "acted as a front for ABC Grant Assistance." ABC Grant Assistance was the main marketer for ORG. The program worked as follows: Gift Funds provided to buyers by ORG was a gift that did not require a repayment. The seller would agree to make a contribution to ORG in an amount equal to the amount of gift funds given to the buyers. The seller is charged a processing fee and the fee is paid to ABC Grant Assistance. The monies are deducted from the seller's proceeds at the close of escrow (see exhibit C).

In a telephone conversation with Officer 2, Vice President, he said he never heard of ORG. He had no knowledge of the organization and was not aware he was listed as an officer on the organizations 20WW Form 990 return. However, he stated that he knew of Officer 1. When contacted by telephone, Officer 3, who was listed as Treasurer on the 20WW Form 990, indicated that he never held the position of Treasurer. Mr. Officer 2 stated that he worked at ORG as a credit counselor representative. He also indicated that he had not worked for ORG for over 10 years.

On October 30, 20ZZ, the IDR was sent out again to the following addresses: Adresse; Adresse 2; c/o Addressee 3. No responds was received.

Application for Recognition of Tax-Exempt Status

The organization filed Form 1023, Application for Recognition of Exemption, in September of 19TT. In Part II of the application, ORG described its activities and operational information as follows.

1. ORG described its past, present and planned activities as follows:

Has been formed to provide assistance to individuals in the purchase of a home under circumstances where such individuals may not otherwise have the resources or ability to purchase a home. The organization will provide specific assistance to qualified buyers with the closing costs and down payments on new homes under circumstances where they could not otherwise meet those payments and costs. The organization would administer this down payment assistance program making it potentially available to any member of the public.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended August 31, 20YY

The organization will make its services available to buyers from any race, religion or national origin and will adhere to all state and federal fair housing regulations and laws.

ORG will gift up to a maximum of 8% of the final sales price toward down payment and closing costs for the purchase of a new home. The buyer must attend a credit counseling class in order to qualify for the assistance. In addition, any home purchased with this assistance must meet a number of requirements to insure that there are no hidden expenses after the purchase. Examples of these additional requirements are a two-year roof certification and a one-year home warranty.

ORG believes that its services will clearly lessen the burden on government by providing independent sources of revenue that create affordable housing opportunities. The organization will provide details regarding its program in the form of an informational manual. To be considered as a "qualified buyer," a potential recipient must demonstrate: That he/she has completed an approved Homebuyer Counseling Course; must be approved for an eligible loan program; must demonstrate employment in the same field for at least one year; must purchase a home with a home warranty (standard home protection plan including central air and heating) and two year roof certification by a license contractor; and provide a written statement demonstrating the need for down payment and closing cost assistance.

In addition to the administration of the down payment assistance program, the organization will also participate in the development of affordable housing and other shelters for members of the general public who cannot otherwise afford same. Specifically, the organization, if unable to engage in the building process itself, will provide funding and assistance to other nonprofit, qualified Section 501(c)(3) organizations involved in the construction, development and provision of multi and single family dwellings. Again, it is foreseen that this assistance will lessen the burdens of governments.

2. ORG described its primary source of financial support as follows:

- Grants and contributions from individuals, organizational and corporate donors, and
- Investment income.

3. ORG described its fundraising program as follows:

The organization was recently formed and therefore has not developed any fund raising program. However, the organization anticipates the creation of a fund raising committee to determine the most successful and efficient method. No fund raising materials have been developed to date.

On February 11, 20VV, based on the information that ORG provided in its application for exemption and on the assumption that ORG would operate in the manner represented in its application, ORG was recognized as a tax-exempt organization described in § 501(c)(3). The organization was given an advanced ruling period from September 17, 19TT ending on December 31, 20XX. The advanced ruling follow up letter 1050 was dated February 18, 20YY declaring ORG's Public Charity Status as a §170(b)(1)(a)(vi).

Federal Returns

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended August 31, 20YY

According to IRS record, ORG has not filed Form 990 for the period under examination and for subsequent years. The last return filed by ORG was for the period ended August 31, 20XX. According to the prior year return (20WW year), it stated as its primary activity was to provide gifts to qualified homebuyers for down payment and closing costs assistance. The primary source of income was direct public support of \$

Operation of ORG's Down Payment Assistance Program

Through research on Google search engine, using the search terms "ORG the following link apparently to the organization under examination was located. The link lead to the web site of www. The opening page of the web site ABC Grant, Granting the key to your new home!!!".

The home page provided a brief paragraph about the ORG and ABC Grant Assistance, as well as featured links titled "lender benefits", "realtor benefits", "builder benefits", "buyer benefits", and "seller benefits".

The home page was viewed on October 19, 20ZZ. On that date it stated the following (see exhibit A):

Grant Assistance is a leading marketer of down payment assistance throughout the United States. ABC is the exclusive marketing agent for the ORG, a 501 C 3 non-profit organization as designated by the IRS. ORG meets the guidelines of HUD handbook 4155.1 REV 4 Section 2-10 for FHA insured loans.

The home page listed facts about ABC Grant Assistance, as follows:

- Marketing down payment assistance since 19TT.
- Network of Account Representatives throughout the United States.
- Headquartered in XYZ.

The home page also listed facts about ORG as follows:

- Non-profit status and providing grants since September 17, 19TT.
- ORG has gifted millions of dollars in down payment assistance helping Americans realize the dream of ORG.
- Headquartered in XYZ.

ABC Grant Assistance web site explained how the down payment assistance program worked as follows:

1. In order for buyers to receive down payment assistance from the ORG they must qualify for an Eligible Loan Program. An Eligible Loan Program is a single family mortgage loan that allows a charitable organization to provide Gift Funds toward a buyer's closing costs and down payment requirements

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended August 31, 20YY

2. Funds provided to buyers by the ORG are a Gift. There is no requirement, anticipation or implication of repayment. Gift funds may be used for the following:
 - a. Down payment
 - b. Closing costs
 - c. Prepaid expenses
 - d. Payoff debts
3. The maximum gift amount is 9% of the sale price of the Certified Home.
4. There are no income limits.
5. Homeowner Restrictions---ABC Grant Assistance is not only for first time homebuyers.
6. Certified Home---A Certified Home is one in which a seller has entered into a CERTIFIED HOME REGISTRATION AGREEMENT. In this contract, the seller has agreed to make a donation to the ORG Foundation of America.
7. In order to receive ABC Grant Assistance Certification, a processing fee of \$695 (fees as low as \$495) is charged to the seller. The seller also agrees to make a contribution to the ORG in an amount equivalent to the amount of gift funds that have been given to the buyer. The monies are deducted from the seller's proceeds at the close of escrow only if the home is sold under ABC Grant Assistance and the buyer is receiving gift funds. The processing fee is paid to ABC Grant Assistance and encompasses all document preparation, education and advertising expenses. The processing fee may be treated as a cost of the sale of a property for income tax reporting purposes.

The following detail described the roles of the lenders, real estate agents, and closing agents as indicated in ABC Grant Assistance program guidelines (see exhibit A).

Loan Officers role:

1. Register with the ABC Grant Assistance.
2. Offers an Eligible Loan Program. An ELIGIBLE LOAN is one that allows the Buyer to receive a gift from a non- profit corporation.
3. The Loan Officer will determine the amount of the Gift Funds that the Buyer will require from the ORG and submit the Original Home Grant Application and Gift Letter.
4. Final Loan Approval.

Real Estate Agent's role:

1. Register with the ABC Grant Assistance.
2. The Real Estate Agent must be in good standing with their respective board.
3. List Certified Homes under ABC Grant Assistance.
4. Assist Buyers to write an offer for a Certified Home. The Certified Home Agreement must be completed and submitted to The terms and conditions of the attached Certified Home Agreement are incorporated in the Purchase and Sales Agreement and Closing Instructions. This Purchase and Sales Agreement is contingent upon the Buyer receiving a Gift Funds from the ORG not to exceed 9% of the Final Sales Price.

Closing agent's role:

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended	
ORG	EIN	August 31, 20YY	

- Call or Toll Free number for closing instructions.
- The following must be faxed to ABC at _____ or Toll Free
 1. Signed Home Grant Application
 2. Signed Gift Letter
 3. Signed Certified Home Agreement

From the time that ABC Grant Assistance receives the above items we can fund and close in as little as 24hours!!

ABC Grant Assistance Benefits:

- Low Fee - \$695 (fees as low as \$495)
- 3 forms to complete to complete deal
 - a. Signed Home Grant Application (buyer)
 - b. Signed Gift Letter (buyer)
 - c. Signed Certified Home Agreement (seller)
- Approved with some of the Nations largest most prominent lenders such as DEF Lenders
- Gift Funds up to 9% of Sale Price
- Gift Funds may be used towards down payment, closing costs, prepaids and even to pay off debt
- Down Payment requirements- \$0 cash required by borrower
- No cash reserves
- No asset requirement
- No income requirement
- No homebuyer education requirement
- No underwriting
- No credit checks
- No recapture clauses
- No homeowner warranty requirement
- Next Day Funding
- No geographic restrictions throughout the United States
- Program Advantage Network-through our system of nationwide advertising we supply leads to Network Members.

With all these benefits Lenders, Realtors, Builders have all the tools necessary to help people realize the American Dream of ORG and at the same time close more business and make more money!!

Law

Section 501 of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes, provided that no part of

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended August 31, 20YY

the net earnings of such corporations inures to the benefit of any private shareholder or individual. See § 501(c)(3).

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 § 501(c)(3). An organization must not engage in substantial activities that fail to further an exempt purpose. 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."

Section 1.501(c)(3)-1(d)(1)(ii) 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) defines the term "charitable" for § 501(c)(3) purposes as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the advancement of education. Id.

Section 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term "educational" for § 501(c)(3) purposes 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) provides that an organization that operates a trade or business as a substantial part of its activities may meet the requirements of § 501(c)(3) if the trade or business furthers an exempt purpose, and if the organization's primary purpose does not consist of carrying on an unrelated trade or business.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.), the U.S. Court of Federal Claims considered whether an organization that provided prenatal care and other health-related services to pregnant women, including delivery room assistance, and placed children with adoptive parents qualified for exemption under § 501(c)(3). The court concluded that the organization did not qualify for exemption under § 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,

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended August 31, 20YY

engaged in substantial advertising, and accumulated substantial profits. In addition, although the organization provided health care to indigent pregnant women, it only did so when a family willing to adopt a woman's child sponsored the care financially. 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 § 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 § 501(c)(3) because it also served private interests more than incidentally. The court found that the organization was created and funded by persons affiliated with entities of a particular political party and that most of the organization's graduates worked in campaigns for the party's candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting the party's 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 § 1.501(c)(3)-1(d)(1)(ii). The court concluded by stating that even if the political party's 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." American Campaign Academy, 92 T.C. at 1077.

In Aid to Artisans, Inc. v. Commissioner, 71 T.C. 202 (1978), the court held that an organization that marketed handicrafts made by disadvantaged artisans through museums and other non-profit organizations and shops operated for exclusively charitable purposes within the meaning of § 501(c)(3). 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 collected by the Bureau of Indian Affairs or other government agencies. The organization marketed only handicrafts it purchased in bulk from communities of craftsmen. The organization did not market the kind of products produced by studio craftsmen, nor did it market the handicrafts of artisans who were not disadvantaged. The court concluded that the overall purpose of the organization's activity was to benefit disadvantaged communities. The organization's commercial activity was not an end in itself but the means through which the organization pursued its charitable goals. The method the organization 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 described in § 501(c)(3).

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 20XX), the court relied on the commerciality doctrine in applying the operational test. Because of the commercial manner in

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended August 31, 20YY

which the organization conducted its activities, the court found that it was operated for a nonexempt commercial purpose, rather than for a tax-exempt purpose. As the court stated:

Among the major factors courts have considered in assessing commerciality are competition with for-profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.

See also, Living Faith Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991) (holding that a religious organization which ran restaurants and health food stores in furtherance of its health ministry did not qualify for tax-exempt status because it was operated for substantial commercial purposes and not for exclusively exempt purposes).

Rev. Rul. 20ZZ-27, discussed three situations of organizations providing financial help to low-income home buyers and whether each qualified as charitable within the meaning of § 501(c)(3).

Situation 1 described an organization (x) formed to help low-income families purchase decent, safe and sanitary homes throughout the metropolitan area in which x was located. x made assistance available exclusively to low-income individuals and families to provide all or part of the funds they need to make a down payment on the purchase of a home. X used standards set by Federal housing statutes and administered by HUD to determine who is low-income. x offered financial counseling seminars and conducted other educational activities to help prepare the potential low-income home buyers for the responsibility of home ownership. x would require a home inspection report for the property that the applicant intended to buy to ensure the house is habitable before making the grant. To fund its down payment assistance program and other activities, x conducted a broad based fundraising program that attracted gifts, grants, and contributions from several foundations, businesses and the general public. X's staff did not know the identity of the party selling the home to the grant applicant or identities of any other parties such as real estate agents, or developers, who may have received a financial benefit from the sale. Further, x did not accept any contributions contingent on the sale of a particular property or properties. The revenue ruling held that by providing financial assistance to low-income families for the down payment on a home, the organization relieved the poor and distressed.

Situation 2 Y is a nonprofit corporation that is like X in all respects as set forth in Situation 1, except as follows. Under Y's grant making 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

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended August 31, 20YY	

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. Y's reliance on the seller's 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. Y does not qualify for exemption from federal income tax as an organization described in § 501(c)(3).

Situation 3 Z is 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 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. Z is operated exclusively for charitable purposes, Z qualifies for exemption from federal taxation as an organization described in § 501(c)(3).

Down payment assistance payments for home buyers in Situations 1 and 3 are made by those organizations out of a detached and disinterested generosity and from charitable or like impulse, rather than to fulfill any moral or legal duty, and thus qualify for exclusion from such home buyers' gross incomes as "gifts" under § 102.

In Situation 2, 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 that directly correlates to the amount of the down payment assistance Y provides to the home buyer. In those cases, the payments received by the home buyers do not qualify for exclusion from gross income as gifts under § 102.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended August 31, 20YY

Unlike in Situations 1 and 3, in Situation 2, the down payment assistance received by those home buyers represents a rebate or purchase price reduction. As a rebate or purchase price reduction, the down payment assistance is not includible in a home buyer's gross income under § 61 and the amount of the down payment assistance is not included in the home buyer's cost basis under § 1012, as adjusted under § 1016.

Rev. Rul. 67-138, 1967-1 C.B. 129, held that helping low-income persons obtain adequate and affordable housing is a "charitable" activity because it relieves the poor and distressed or underprivileged. In Rev. Rul. 67-138, the organization carried on several activities directed to assisting low-income families obtain improved housing, including (1) conducting a training course on various aspects of homebuilding and ORG, (2) coordinating and supervising joint construction projects, (3) purchasing building sites for resale at cost, and (4) lending aid in obtaining home construction loans.

Rev. Rul. 70-585, 1970-2 C.B. 115, discussed four situations of organizations providing housing and whether each qualified as charitable within the meaning of § 501(c)(3). Situation 1 described 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 provided financial aid to low-income families who were eligible for loans under a Federal housing program but did not have the necessary down payment. The organization made rehabilitated homes available to families who could not qualify for any type of mortgage. 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 held that by providing homes for low-income families who otherwise could not afford them, the organization relieved the poor and distressed.

Situation 2 described 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 was made available to members of minority groups who were unable to obtain adequate housing because of local discrimination. The housing units were 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 held that the organization was engaged in charitable activities within the meaning of § 501(c)(3).

Situation 3 described 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 generally was old and badly deteriorated. The organization developed an overall plan for the rehabilitation of the area, sponsored a renewal project, and involved residents in the area renewal plan. The organization also purchased an apartment building 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 held that the organization was described in § 501(c)(3) because its purposes and activities combated community deterioration.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended August 31, 20YY

Situation 4 described 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 revenue ruling held that the organization failed to qualify for exemption under § 501(c)(3) because the organization's program was not designed to provide relief to the poor or further any other charitable purpose within the meaning of § 501(c)(3) and the regulations.

Effective date of revocation

An organization may ordinarily rely on a favorable determination letter received from the Internal Revenue Service. Treas. Reg. §1.501(a)-1(a)(2); Rev. Proc. 20XX-4, §14.01 (cross-referencing §13.01 et seq.), 20XX-1 C.B. 123. An organization may not rely on a favorable determination letter, however, if the organization omitted or misstated a material fact in its application or in supporting documents. In addition, an organization may not rely on a favorable determination if there is a material change, inconsistent with exemption, in the organization's character, purposes, or methods of operation after the determination letter is issued. Treas. Reg. § 601.201(n)(3)(ii); Rev. Proc. 90-27, §13.02, 1990-1 C.B. 514.

The Commissioner may revoke a favorable determination letter for good cause. Treas. Reg. § 1.501(a)-1(a)(2). Revocation of a determination letter may be retroactive if the organization omitted or misstated a material fact or operated in a manner materially different from that originally represented. Treas. Reg. § 601.201(n)(6)(i), § 14.01; Rev. Proc. 20XX-4, § 14.01 (cross-referencing § 13.01 et seq.).

Section 6001 of the Internal Revenue Code provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

Section 6033(a)(1) of the Code provides, except as provided in Section 6033(a)(2), every organization exempt from tax under Section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Section 1.6001-1(a) of the Income Tax Regulations ("Regulations") in conjunction with Regulation Section 1.6001-1(c) provides that every organization exempt from tax under Section 501(a) of the Code and subject to the tax imposed by Section 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by Section 6033.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended August 31, 20YY	

Section 1.6001-1(e) of the regulations states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

Section 1.6033-2(i)(2) of the regulations provides that every organization which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status and administering the provisions of Subchapter F (Section 501 and following), Chapter 1 of Subtitle A of the Code, Section 6033, and Chapter 42 of Subtitle D of the Code. See Section 6001 and §1.6001-1 with respect to the authority of the district directors or directors of service centers to require such additional information and with respect to the books of accounts or records to be kept by such organizations.

Revenue Ruling 59-95, 1959-1 CB 627, concerns an exempt organization that was requested to produce a financial statement and a statement of its operations for a certain year. However, its records were so incomplete that it was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provision of Section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

Government's Position

Based on information gathered from ABC Grant Assistance Group website, we conclude that ORG is not operated for exempt purposes as described in I.R.C. § 501(c)(3). 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, educational, or other exempt purposes. Among other things, ORG must demonstrate conclusively that the organization meets the operational test of *section 1.501(c)(3)-1(c) of the regulations*. The information indicated that ORG did not directly administer the down payment assistance program but rather acted as a front to enable ABC Grant Assistance, a for-profit organization to operate a down payment assistance program that does not exclusively serve a purpose described in *section 501(c)(3)* and that furthers a substantial private benefit. ABC Grant Assistance supplies program manual, brochures and door hangers that can be used to market to realtors, lenders, builders, and prospective homebuyers (see exhibit A). According to the web site, ABC Grant Assistance described itself as:

ABC Grant Assistance markets down payment assistance across the nation for the ORG a 501 c 3 non-profit, in their mission to assist honest, hardworking people to participate in the American dream of ORG. This roots from the belief that ORG builds wealth, pride and security for individuals, families, communities and America.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended August 31, 20YY

The transactions described on the web site resulted in a circular flow of the money. The sellers made payments to ORG, ORG provided the funds to the buyers, who used the funds to make the down payment necessary to purchase the seller's home. The seller's payment was used to replenish the pool of funds that was used to provide "gifts" to subsequent buyers. Because the amount of the "contributions" were directly related to the amount of the down payment assistance provided to the buyers plus the service fee, the actual source of the down payment assistance was the seller's "contribution."

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, 326 U.S. 279, 283 (1945), 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.

Like the organization considered in American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), ORG is structured and operated to assist the private parties who fund it and give it business. Sellers who participated in ORG's DPA program benefited from achieving access to a wider pool of buyers, thereby decreasing their risk and the length of time the home is on the market. They also benefited by being able to sell their home at the home's full listed price or by being able to reduce the amount of the negotiated discount on their homes. Real estate professionals who participate in ORG's DPA program, from real estate brokers to escrow companies, benefited from increased sales volume. It is evident from the foregoing that ORG's DPA program provided ample private benefit to the various parties in each home sale.

ORG's down payment assistance procedures are designed to channel funds in a circular manner from the sellers to the buyers and back to the sellers in the form of increased home prices. To finance its down payment assistance activities, ORG relies exclusively on sellers and other real-estate related businesses that stand to benefit from the transactions it facilitates. ORG does not appear to receive funds from any other sources.

Operating a trade or business of facilitating home sales is not an inherently charitable activity. Unlike the trade or business in Aid to Artisans, Inc. v. Commissioner, 71 T.C. 202 (1978), ORG's trade or business was not utilized as a mere instrument of furthering charitable purposes but was an end in itself. ORG provided services to home sellers for which it charged a fee. ORG did not receive any funds from parties that did not have interest in the down payment transactions. Like the organizations considered in American Campaign Academy, supra, and Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) a substantial part of ORG's activities furthered commercial rather than exempt purposes.

Additionally, in GAO-05-194 report to congress, *Mortgage Financing: Actions Needed to Help FHA Manage Risks from New Mortgage Loan Products*, the report analyzed the importance of loan-to-value (LTV) ratios and credit scores and how it attributed significantly to loan performance

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended August 31, 20YY

and its results on the performance of low and no down payment mortgages supported by FHA (See exhibit B).

Based on the foregoing, ORG has not operated exclusively for exempt purposes, and, accordingly, is not entitled to exemption under § 501(c)(3).

The government proposes revoking ORG's exemption effective September 1, 20XX since the organization operated in a manner materially different from that represented in its application for exemption, and not exclusively for exempt purposes as required under IRC section 501(c)(3).

Taxpayer's Position

ORG will be allowed 30 days to review this report and respond.

Conclusion

In order to qualify for exemption under IRC § 501(c)(3) an organization must be both organized and operated to achieve a purpose that is described under that Code section. ORG's DPA program is not operated in accordance with Internal Revenue Code § 501(c)(3) and the regulations thereunder governing qualification for tax exemption under Code. ORG provided down payment assistance, purportedly in the form of a gift, to individuals and families for the purchase of a home.

ORG operated in a manner indistinguishable from a commercial enterprise. ORG's primary activity is brokering transactions to facilitate the selling of homes. ORG's primary goal was to maximize the fees from these transactions. Because ORG's primary activity was not conducted in a manner designed to further § 501(c)(3) purposes, ORG was not operated exclusively for exempt purposes within the meaning of § 501(c)(3).

In addition, under Sections 6001 and 6003, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

The position of the Internal Revenue Service is that ORG failed to meet the reporting requirements under Sections 6001 and 6033 to be recognized as exempt from federal income tax under Section 501(c)(3) of the Code.

Accordingly, the organization's exempt status is revoked effective September 1, 20XX.

Form 1120 returns should be filed for the tax periods after August 31, 20XX.



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service
TE/GE Exempt Organizations Examinations Division

May 16, 2007

ORG

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

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 Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. 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. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

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:

Internal Revenue Service
Local Taxpayer Advocate Office

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,

Internal Revenue Agent

Enclosures:
Publication 892
Publication 3498
Report of Examination