



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **200821038**  
Release Date: 5/23/2008

Date: February 28, 2008

SE:T:EO:RA:T:2

UIL: 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 as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

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.

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, 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,

Robert Choi  
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: February 28, 2008

Uniform Issue List: 501.00-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M =

N =

O =

P =

State =

Date =

y = \$

z = \$

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, M, are a State nonprofit corporation formed on Date. Your Articles of Incorporation provide that you are organized exclusively for charitable, religious, literary, educational, cultural and scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, and specifically, for the purpose of providing grants to low income borrowers.

Your Form 1023 Application provides that you will provide grants to low-income individuals to assist such individuals in connection with the purchase of a home. Individuals applying for grants will complete a "grant application." Home ownership counseling courses will be highly recommended. It further provides that your primary source of financial support will come from donations from sellers of homes to help stimulate low-income individuals in purchasing a home.

Your Form 1023 Application shows \$y in expected receipts from those involved in the real estate community such as sellers of homes and lenders. It showed \$z in anticipated payments by M to prospective buyers pursuant to the eligible loan program established by the organization. The amount will be paid to assist qualified homebuyers for the down payment and closing costs for the purchase of participating homes. A participating home is a home owned by a seller who has entered into a participating home agreement. A buyer will qualify for an eligible loan program which is a single-family mortgage loan product that allows M to provide gift funds toward a buyer's down payment and closing costs. A qualified buyer is a buyer that has been (i) credit approved for a qualifying loan program, (ii) has completed an approved home ownership counseling course indicating the responsibilities of home ownership, and (iii) purchases a participating home. The qualified buyer will be the one that is a dedicated and deserving buyer in the real estate market who, with a down payment and closing cost assist from M is ready, willing and able to purchase a home to be utilized as the buyer's principal residence. The only condition to the receipt of the grant is that the prospective recipient of a grant of gift funds must successfully complete an approved home ownership counseling course which is offered to the prospective recipient at no cost to the buyer by a registered real estate agent, lender, or title company.

Your letter dated May 2, 2002 states that you hope there will be an alliance with various mortgage brokers with experience in working with low-income individuals. It further provides that mortgage lenders will be made aware of M through home counseling programs, word of mouth and advertising.

Your website provides an overview of your grant program. It states that N, a marketing and fundraising organization, is the exclusive administrator of M's grant program. The grant is a gift to homebuyers and can be used for their down payment, debt payoff, and/or closing costs. The grant is a bona fide gift to the homebuyer with no obligation to pay back whatsoever. The seller or builder of the home being purchased pays a service fee to Grant America for their services. The fee is a percentage of the sales price of the home. The fee is based on how much cash the buyer needs to get into the home, whether 3%, 5%, or 20% (the "grant") and then .75% of the sales price is added to the grant amount. For example, if the buyer needs a grant of 5% for his down payment, the seller would pay a 5.75% service fee. At closing, the buyer receives a "grant" from M from an existing pool of funds. After closing, the seller pays the service fee to M and the pool of funds is replenished for future grants. A seller would be interested in using the program because the availability of the "grant" can increase their pool of potential buyers, and their bottom-line net is comparable to a traditional sale. If a buyer wants to use the program, M will refer the buyer to a realtor or lender that is familiar with M's program. If the buyer is already working with a realtor or lender, the realtor or lender can contact M and M will provide them with the necessary information to use the program. Buyer can receive a grant of 3%, 5%, or 10% of the purchase price of the home they are buying depending on what the loan program requires. The buyer qualifies for the program after they have been approved by the lender for the mortgage. M's program works with FHA as well as conventional loans.

As provided in your letter dated September 22, 2003 M works with the buyer, realtor and mortgage company in the process of using the grant to accomplish the financing solutions for the buyer in order to enable the buyer to purchase a residence and to have a problem free

settlement. The program will not increase house prices to cover fees paid to them. M provides that up to the date of its letter it has only used the grant with FHA financing and requires a Direct Endorsement Underwriter to review the appraisal report and the buyer's credit and qualifying ratios.

Your letter dated September 22, 2002 provides facts regarding seller's contributions and M's service fees. M will only allow disbursement of a grant if a fully Direct Endorsement underwritten approval exists. The price is determined by way of a negotiation between buyer and seller and approved by a FHA appraiser and underwriter. M averages 2 – 5 grants per month. The amount of contribution is determined by the buyer's needs to complete the purchase limited to the down payment and closing costs. The seller contributes only upon completion of the loan settlement. Seller's contribution is collected only at settlement. There is never a need for a reimbursement. The seller's contribution is contingent upon the sale of the seller's home through the program. M collects a .75% service fee to maintain the program. The service fee amount was determined to pay for advertising, personnel, overhead and to be competitive with other grant programs. If the property does not settle, the seller does not pay any fees. The service fee of .75% is firm and is the same in every transaction. The amount to the buyer is determined based upon the need of the home buyer to complete the transaction. There is no charge to the buyer to participate in the program. The seller's contribution is never greater than the total of the down payment and closing costs. Any excess must be returned to the seller.

Your letter dated September 22, 2002 states that M had only had grants with FHA financing and only requires FHA approved appraisers and FHA suggests independent inspection of all homes but does not require it. Although in earlier correspondence M stated that homeowners would learn about the program from home ownership courses, M now says it did not state that and also denies stating that counseling courses are recommended. M does not offer any services after the closing of the purchase and at that time had not offered the grant to anyone other than owner-occupied individuals. M requires that anyone using FHA financing be fully approved by an endorsement underwriter. In addition, the individual must meet all of the eligibility requirements of the program. Since FHA financing tends to be used by more first time home buyers in modest priced communities, M feels that the program does stimulate low income housing. All grants utilized with FHA financing, therefore, qualify as low income housing under FHA criteria.

Your letter dated September 22, 2002 provides that M offers joint advertising incentive to mortgage brokers that do business with M. It states that N is unrelated to M or to its officers or board members. It further states that M's website does not state that grants can be used for debt payoff. Referenced website materials are enclosed with this determination letter.

Your letter dated January 23, 2004 indicates that M paid fees for 3 social service facilitators, who work for a local service center for the Spanish speaking community which help borrowers with forms, documents, language barriers, etc.. It also states that M suggests potential buyers take buyer education courses to hopefully ensure that buyer's acquire and keep homes without incurring a default in their financing. It states further that M assists a segment of the Hispanic population in southern Q in obtaining home ownership and that M would contact housing departments in inner cities to notify them of the grant program once exemption is

achieved. It indicates that M has advertised in a limited number of local newspapers and received free publicity on a local radio station known as P provided by the station as a community service.

Your letter dated January 28, 2004 provides that M does not offer homeowner education programs, nor directly offer credit counseling to homeowners. M's criteria for approving homeownership counseling courses will be by a direct examination of courses offered and a determination by the M as to value of such courses. M provided a list of homeownership courses. The letter states that M does not require evidence of homeowner counseling courses completed, however, such documentation is requested from recipient and used as part of criteria receiving a grant. The letter provides that M believes that any grant offered with FHA financing has a very structured set of guidelines and as such no additional requirements other than HUD guidelines necessary. It states that M adheres strictly to FHA/HUD guidelines and that all business has been generated through HUD financing. It further states that M offers all individuals an opportunity to obtain a grant and does not discriminate with arbitrary guidelines. M intends to direct buyers to mortgage companies and realtors that are aware of existence and benefit of program. The letter provides that HUD does not indicate a maximum income that can be used in HUD program, however, it has been indicated by HUD that FHA's purpose is to stimulate first home purchases, and that it has been shown that FHA financing is used predominately with low-income housing. The letter states that M does not set any income limitations; M's income requirements are FHA guidelines.

Your letter dated April 27, 2006 contains data from your website which states that no roof certification, homeowner warranties or homebuyers education are required. It states that funding will occur at loan closing after receipt of executed grant application and contract addendum if necessary. It provides that the Grant is typically 3% of sales price, that M may grant a higher percentage if needed. It explains the grant amount is limited to actual borrower incurred costs. It states that gift letters go out same day as grant application is received. It explains that grants are available on FHA, Conventional and sub-prime loans, and provides that Seller can save hundreds of dollars. Your website provides step-by-step instructions for lenders, as follows: The real estate contract addendum should be filled out and signed by seller/builder and the buyer at same time sales agreement is executed; the addendum is then forwarded to lender; grant application should then be filled out by lender which can be done on line at M's website or faxed along with contract addendum; gift letter for buyer is prepared and faxed to lender by M. It further states that when the loan is approved, the lender notifies M of the target closing date, closing instructions are faxed to title company, grants funds are wired from M to title company upon review and approval of estimated settlement statements, and finally the closing occurs.

Your letter dated April 27, 2006 contains data from your website on tips for Lenders. It states that the grant is a gift to buyers to be used for down payment and/or closing costs. It provides that gifts from non-profit organizations are allowed by FHA guidelines. It states that when packaging a loan with a gift from a nonprofit, the underwriter will require a gift letter, and that this is the only documentation that the underwriter needs. Finally, it provides that M will provide evidence of tax exempt status for underwriter if necessary.

You submitted, with your letter, dated April 27, 2006, the following forms: Form to register with Exempt Organization; Grant funds application form; Participating home agreement form; and, Real estate contract addendum form

The manner in which you operate is referred to as "seller-funded downpayment assistance" in the Final Report, *An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations*, commissioned by Office of Housing, United States Department of Housing and Urban Development, HUD Contract No: C-OPC-22550/M0001 (March 1, 2005). The report concludes that seller-funded 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.

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(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 certain partisan political party entities and that most of the organization's graduates worked in campaigns for the partisan political party candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting partisan political party 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 partisan political party candidates and entities did "comprise a charitable class, [the organization] would bear the burden of proving that its activities benefited members of the class in a non-select manner."

In Aid to Artisans, Inc. v. Commissioner, 71 T.C. 202 (1978), the court held an organization that marketed handicrafts made by disadvantaged artisans through museums and other non-profit organizations and shops be operated for exclusively charitable purposes within the meaning of section 501(c)(3) of the Code. The organization, in cooperation with national craft agencies, selected the handicrafts it would market from craft cooperatives in communities identified as disadvantaged based on objective evidence the Bureau of Indian Affairs or other government agencies. The organization marketed only handicrafts it purchased in bulk from these communities of craftsmen. It did not select individual craftsmen based on the needs of the purchasers. The court concluded that the overall purpose of the activity was to benefit disadvantaged communities. The method it used to achieve its purpose did not cause it to serve primarily private interests because the disadvantaged artisans directly benefited by the activity constituted a charitable class and the organization showed no selectivity with regard to benefiting specific artisans. Therefore, the court held that the organization operated exclusively for exempt purposes.



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

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 a 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.

Rev. Rul. 2006-27, 2006-21 I.R.B 915, discusses 3 examples of organizations providing down payment assistance for home buyers.

Situation 1 describes an organization that provides assistance exclusively to low-income individuals to help with the funds needed to make a down payment on the purchase of a home. It also offers educational activities to help prepare potential low-income home buyers for the responsibility of home ownership. It requires a home inspection report to ensure that the home being purchased will be habitable. It conducts a broad based fundraising program. It does not accept contributions contingent on the sale of a particular property. Its staff awarding grants does not know the identity of parties involved in the transaction. The organization meets the requirements for exemption under section 501(c)(3) of the Code. Its grantmaking procedures combined with its efforts to educate homebuyers ensures that it is operated to benefit low-income beneficiaries, who constitute a charitable class. Any benefit to other parties does not detract from its charitable purpose of relieving the poor and distressed.

Situation 2 describes an organization that receives most of its support from home sellers and real-estate businesses that may benefit from the sale of homes to buyers. The amount received from a seller correlates to the amount of the down payment assistance provided to the buyer. Its staff considering an application for a grant knows the identities of parties involved in the transaction. This organization does not qualify as an organization described in section 501(c)(3) of the Code. Its receipt of a payment from the home seller corresponding to the amount of the down payment assistance and its reliance on these contributions for most of its funding indicate that the benefit to the home seller is a critical aspect of its operations. The business purpose becomes a primary goal and it is structured and operated to assist private parties.

Situation 3 describes an organization formed to combat community deterioration in an economically depressed area. It participates in a renewal project for the area that includes making down payment assistance available to eligible home buyers who wish to participate in newly-constructed affordable housing units by the organization. It conducts educational activities

to help prepare the homebuyers for the responsibility of home ownership. It conducts a broad based fundraising program. Its down payment assistance program exclusively serves a charitable purpose of combating community deterioration, and so it meets the requirements for exemption under section 501(c)(3) of the Code.

Analysis:

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 or of the underprivileged. 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 the poor or underprivileged by enabling low-income individuals and families to obtain decent, safe housing. See Rev. Rul. 70-585, Situation 1, and Rev. Rul. 2006-27, 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. The information provided indicates that you do not limit your assistance to certain geographic areas or target those areas experiencing deterioration or racial tensions. You have not shown that your program is designed to attract a mixed-income group of homeowners to a specifically defined geographical area that has a history of racial problems. See Rev. Rul. 70-585, Situations 2 and 3, and Rev. Rul. 2006-27, Situation 3.

Your down payment assistance program does not serve exclusively low-income persons. Instead, your program is open to anyone that qualifies for an FHA or HUD loan, without any income limitations. Your program is available to anyone who is able to qualify for an FHA mortgage from any lender in any State in the United States. Arranging the purchase of homes in a broadly defined metropolitan area does not further charitable purposes within the meaning of section 501(c)(3) of the Code. See Rev. Rul. 70-585, Situation 4 and Rev. Rul. 2006-27, Situation 2.

Furthermore, you do not engage in any activity to ensure that the house will be habitable or that the buyer will be able to afford to maintain the house over time. Instead, you rely solely on information provided by FHA, and on the mortgage lender, insurance agency, home inspector or other third party to conduct such review. You do not provide oversight or conduct any educational program or other activity to ensure that buyers are purchasing properties that are safe, decent, sanitary, and affordable. See Rev. Rul. 67-138 and Rev. RUI. 2006-27,

## Situation 1.

Only an insubstantial portion of the activity of an exempt organization may further a nonexempt purpose. As the Supreme Court held in Better Business Bureau of Washington D.C., Inc. v. United States, *supra*, the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. You conduct your operations in a manner that is consistent with a commercial firm seeking to maximize sales of services, rather than in a manner that would be consistent with a charitable or educational organization seeking to serve a charitable class or the public at large. The manner in which you operate your down payment assistance program indicates that you facilitate the sales of homes in a manner that is indistinguishable from an ordinary trade or business. You operate as a business that provides services to home sellers for which you charge a market rate fee. For example, your literature and website explain how the seller and agent will benefit from your program as sellers are able to sell their homes at the full list 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., *supra*. 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. You are not supported by contributions from the general public, government or private foundation grants. Almost all of your revenue comes from the sellers you serve. That your primary activity is to promote and to further your private business interests is reflected in the financing structure of your down payment assistance program. In this respect you are similar to the organization described in Easter House v. U.S., *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 if your program were changed to be directed to exclusively low-income individuals, your reliance entirely on home sellers or other real-estate related businesses that stand to benefit from the transactions to finance your down payment assistance activities demonstrates that you are operated for the purpose of benefiting private parties, contrary to section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Your grant making procedures indicate that gift funds are only provided if a seller has paid a service fee and made a contribution to you equal to the amount of the gift provided by you to the buyer. In fact, these transactions are not contributions because they will not "proceed from detached and disinterested generosity." Commissioner v. Duberstein, 363 U.S. 278, 285 (1960). Any 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 effect, these payments have a circular character to them. 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 "contributions" are appropriately characterized as fees received in exchange for the sale of a service. Your information indicates that your 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. That you receive a payment from the home seller corresponding to the amount of the down payment assistance in every transaction 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 v. U.S., *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 v. Comm., *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.

Conclusion:

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

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170 of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

If you do intend to protest this determination, please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service

1111 Constitution Ave, N.W.  
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure

*An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations*  
HUD Contract No: C-OPC-22550/M0001 (March 1, 2005).