



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200941039**
Release Date: 10/9/2009

Date: 7/14/2009

UIL: 501.36-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120

Tax Years:
All

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,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure

Notice 437

Redacted Proposed Adverse Determination Letter

Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: 4/17/2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

A = Date

B = State

C = Applicant

D = Governmental institution

M = For-profit organization

U = Name 1

V = Name 2

W = City

UIL Nos: 501.36-00

512.06-00

534.00-00

Dear :

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

FACTS

You, C, are a corporation formed on A, and operate pursuant to the laws of the State of B. You wish to be recognized as a public charity status of 509(a)(1) and 170(b)(1)(A)(vi). Your Articles of Incorporation state that said organization is organized exclusively for religious, charitable, educational, and literary, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986, or corresponding section of any future United States Internal Revenue Code.

In your application, you describe your activities as follows:

You will purchase and refurbish foreclosure houses for sale to families by to pay the down payments through grants, donations from other organizations and individuals. The

donations and grants will be received from sellers/lenders on a sliding pay scale, where the potential owner gradually moves into paying the full amount of mortgage payments while working on their financial status. Financial training sessions will be offered by M, the founder's related, for-profit organization and will be given weekly as a part of the arrangement to purchase the homes. This training will be given in three levels and will assist families with eliminating debt, establishing credit, raising scores, investing and understanding money in retirement account (50% of your total activity).

You will operate a childcare facility that will accommodate children age 0-4, that is equipped with educational and developmental age appropriate materials, designed to enhance the mind of growing children. This activity will include a before and after school program for working families (20% of your total activity).

You will provide an educational enrichment opportunity program with after school computer technology assistance to encourage better performance in school, and to provide access to computer technology assistance to encourage better performance in school, and to provide access to computers for all students in the community (10% of your total activity).

You will be working along side the D in Helping at-risk youth, by helping them become valued members of society. This will be done through providing an opportunity for higher education by helping them obtain their GED and enroll in college and job training skills with the assistance of the local Community College Skill Training Department (10% of your total activity).

In your letters of May 15 and August 8, 2007, you provide the following additional information regarding your activities and the percentage of time for your core activities (% for core activities and 17% for administrative work and assisting programs) :

Financial Training and Coaching Sessions: 8 % of total activity (as for time and funds aspects)

- This is financial training and coaching sessions that help the clients to understand how to repair their credit, increase their credit worthiness, increase income and income strength (i.e. saving, budgeting, investment options available, locating other income options, etc). The one year long training costs \$2,194 per family including monthly membership fee of \$15. The entire training consists of initial one-hour Face to Face Session (\$50), sixteen one-hour Financial Training Sessions (\$600), four half-hour Weekly Internet Coaching Sessions for a year (Free), one-hour Bi-Weekly Tele-conference for a year (\$1,200), four one-and-half hours Quarterly Face to Face Session (\$200). The clients do not pay the above fees. All the fees will be covered by the subsidy grants you receive.

This training will be given by M. M is owned by U who is your founder and president. You have not provided how you selected M as the training contractor, nor have you showed that there was a Board discussion for this contract. You stated that M will be paid for its training by the subsidy grants that you will apply and receive. You provided no further details on the planned subsidy grants.

You state that the Financial Training and Coaching Sessions are designed to educate the families on financial strategies to increase their planning and creditworthiness, help them to understand their home as an investment, and develop healthy financial habits to obtain home ownership. You also state that this training and coaching is required in order to have access to all of the different programs and offerings you, C, have available for families.

Home Ownership Program: 45 % of total activity (as for time and funds aspects)

- You will build 20 to 25 homes starting from 3Q, 20 to 2Q, 20 , and at least 200 homes in 2010. You will start to build in B, but will expand throughout the entire United States. You provided sample model homes that you are going to build through commercial builders. The model homes are typical homes available on the market.
- You will purchase and renovate homes for families to purchase, lease, or use as transition homes while waiting for a permanent residence. You will start this type of housing program in B as well, but will expand throughout the entire United States.
- You anticipate that 35% of your homes will be sold to low income families, 30% to mid income, 15% to transitional housing, 20% to other categories.
- You do not conduct and do not have plans to conduct any governmental housing program.
- The price of the home will be determined by comparables and appraisals conducive to purchasing a property. You will use a realtor and appraiser to obtain this information.
- You require the homebuyers the following to participate in your Home Ownership Plan offered by M:
 - The clients must be enrolled in Level One financial training classes and have established a schedule for their by-weekly financial coaching sessions.
 - The clients must have salaries that meet the income levels for the HUD standards for low to mid income families, or lower.
 - Homeless families are eligible for the rental and transitional housing units when they complete the Level One Financial Training Classes.
 - No client can have ownership in another property, as primary or vacation property, unless it's timeshare.
 - All clients are expected to attend quarterly training offered by M, on home improvements, landscaping, and neighborhood beautification sessions.
 - The family's income should be in the range of low to mid income ranges provided by HUD standards.
- You will make the following housing and financing plans through partnered developers, builders and lenders in connection with this Home Ownership Plan:

- Purchase: Affordable mortgage terms, no application fee, no credit fees, no closing cost, lower interest rates.
- Purchase and Rehab: An option for those who would like a lower priced home and are willing to go through the time to rehab the home before making it a permanent residence. Affordable mortgage terms, no application fee, no credit fees, no closing cost, lower interest rates.
- Lease to Own: To repair credit to purchase at a lower interest rate and to allow families to move into homes at the owners lower interest rate payments.
- Refinance: After families have taken the Level One Financial Training Course and have set up a plan on how to pay for and keep their home; families will be able to refinance with any lender. C will have a list of approved lenders, but families are not obligated to use those sources.
- Rentals and Transitional Housing: Available to help prepare families to own their own homes, while keeping them from becoming homeless. Also allows families to save for a down payment. C will assure that rents fit within the median range rates posted with HUD.
- You do not require any specific lenders and loan programs. However, you search for lenders, financial institutions, investors, and builders who will allow the flexible mortgage plan of C to be a part of their offerings for C clients. You plan to offer the following programs:
 - Sliding pay-scale plan: Begin with smaller mortgage payments and increase over time.
 - Plan that a builder or a seller pays a part of the mortgage over time.
 - A mortgage program with refinancing options after three years.

Subsidy Program for Home Ownership Program: 10 % of total activity (as for time and funds aspects)

You will offer subsidy to the low to mid income families who buy a home from you. There are two plans, a 3-year and a 5-year plan. Initially you will make a larger payment amount for the first year, 2/3 of mortgage payment for 5-year plan and 1/2 of mortgage payment for the 3-year. The subsidy amount will be reduced gradually until the subsidy ending year.

In your letter of February 20, 2008, you stated that you will also offer \$1,500 for the downpayment or closing costs to assist homebuyers. The assistance will come from the seller or lender. You will require the lender and/or seller to cover the assistance amount and the homebuyer to enroll in your financial training and coaching sessions. You also stated that the seller's contribution must cover the remaining balance of the down payment; the buyer will not have an amount less than down payment to pay. You did not explain the situation where the seller will not pay more than \$1,500 for the assistance. This downpayment assistance is available for low to mid income families and single mothers.

Fore 80 Project: 8 % of total activity (as for time and funds aspects)

This program is designed to give families information for foreclosures as they are going through them. You will act as an informational resource for families and make all their options known to them. You will also provide subsidy to the families who are facing financial difficulties due to foreclosure and bankruptcy up to \$15,000. The subsidy will also be available for the people whose homes have been foreclosed, to assist in moving fees and the downpayment and deposit for new residences. The beneficiaries do not have to pay back the subsidy; however, you will ask for donations once the beneficiary is back on his/her feet.

Family Life and Training Center and Childcare Service: 12 % of total activity (as for time and funds aspects)

- Childcare Service: You will run a childcare facility that will accommodate 50 to 100 children, ages 0 to 5 years old. The trainees of C financial training programs will have priority placement, but the service is open to the public. For those families who are registered for the financial training and coaching sessions a portion (to be determined) of their childcare fees will be credited towards their down payment or mortgage subsidy plan.
- Before and After School Program: You will also provide care for school-aged children of families participating in C financial training. This program will accommodate care for 25 to 50 students, aged 5 to 12.

You state that M is a for-profit financial and homeownership training and coaching company that also conducts real estate business, such as purchasing homes for resale and lease. It also helps non-profit organizations with grants and funding. M is owned by U who is your founder, president, and chairman of the board, and she is not subject to the control of the board according to section 5.4 and 5.5 of the bylaws. Your board consists of 12 members according to your letter of August 7, 2007. Most of your board members also work for M as a consultant or an employee, and they are in real estate, credit and collection, and mortgage loan business in addition to working for C and M.

The letter further states that M has a contract with you to conduct Financial Training and Coaching Sessions. Later you provided a contract agreement that is drafted by U. You did not explain whether or not the draft was approved by the board. Your clients will not pay any fees to M. Instead, the fees will be paid through the subsidy grants that you will receive from governmental and private grants on behalf of your clients. You explained the reason that you chose M is because you were established by M to assist low to mid income families and assist other non-profit and faith based organizations with the financial training and coaching sessions.

You state that M will also participate in your home ownership program to provide homes to your clients as soon as possible. You state: "At this point, M does not have homes available for C. There is currently no contract made. The M board must discuss the terms of the contract to determine participation and accountability."

The relationship between M and C is described:

M is a vendor for C and is owned and operated by U. ... M and C have shared office space and websites; however M is not mentioned to the clients, as their services fall under the financial training and coaching offerings of C. ... M and C share a mailing address (\$85.00 for 1 1/2 years) and a phone messaging system (free service). Of the M board members, the primary persons assisting with the

training are U and V. Other members will assist if needed with surveys and compiling of client information from sessions. . . .

You represent that the funds for your housing and financial training and coaching programs comes from the governmental grants (other than the proceeds generated by sale or lease of the homes you renovate and build). You will target a specific grant for a specific program, and will allocate a portion of the grant to overhead expenses. In the letter of September 25, 2007, you state the following for the current status of your grant applications:

At this time there are no subsidy grants. It is the hope of C that funding will become accessible once [its] 501(c)(3) status is obtained. Most of the grant funders require a determination letter with applications. (Ex: City of W/County of W for agency grants)

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 that no part of the net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the 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(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

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.

The petitioner in est of Hawaii, 71 T.C. 1067 (1979), conducted training, seminars and lectures in the area of intrapersonal awareness. Such activities were conducted under licensing arrangements with various for-profit corporations. The licensing agreements were conditioned on the petitioner maintaining tax exempt status. The petitioner argued that it had no commercial purpose of its own and that its payments to the for-profits were just ordinary and necessary business expenses. The Court did not agree.

To accede to petitioner's claim that it has no connection with International (the for-profit licensor of the educational program) is to ignore reality. While it may be true that the same individuals do not formally control them, International exerts considerable control over petitioner's activities. It sets the tuition for the standard training and requires a minimum number of such trainings. It requires petitioner to conduct regular seminars and to host special events. It controls the programs conducted by petitioner by providing trainers who are salaried by and responsible to EST, Inc., and it further controls petitioner's operations by providing management personnel who are paid by and responsible to EST, Inc. In short, petitioner's only function is to present to the public for a fee ideas that are owned by International with materials and trainers that are supplied and controlled by EST, Inc. Moreover, we note that petitioner's rights vis-à-vis EST, Inc., International, and PSMA are dependent on the existence of its tax-exempt status--an element that indicates the possibility, if not the likelihood, that the for-profit corporations were trading on such status...

Regardless of whether the payments made by petitioner to International were excessive, International and EST, Inc., benefited substantially from the operation of petitioner, (Emphasis added).

In Housing Pioneers, Inc. v. Commissioner, 58 F.3d 401 (1995), the court affirmed the judgment of the trial court that the organization was not entitled to tax-exempt status as a corporation operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code. The court found that the organization's substantial purpose of helping a for-profit business take advantage of its tax-exempt status was a non-exempt purpose even if it had the effect of making housing more affordable.

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 Bubbling Well Church of Universal Love, Inc. v. Commissioner, 670 F.2d 104 (9th Cir. 1981), the court affirmed the tax court's decision that held that the organization supplied no evidence showing that the payments to its controlling members were reasonable.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974), provides that an organization seeking a determination letter or ruling as to the recognition of its tax-exempt status

has the burden of proving that it satisfies all of the requirements of the particular tax-exemption category.

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."

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that 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. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

Section 4.03 of Rev. Proc. 2008-9, 2008-2 I.R.B., provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, the Service will generally issue a proposed adverse determination letter or ruling.

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. Its operating funds were mainly 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. 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).

Rev. Rul. 76-408, 1976-2 C.B. 145, holds that an organization that provides interest-free home repair loans in a badly deteriorated urban residential area to low-income homeowners who are unable to obtain loans elsewhere qualifies for exemption from federal income tax under section 501(c)(3) of the Code because it is operated exclusively for charitable purposes.

Rev. Rul. 2006-27, 2006-21 I.R.B. 915, Situation 1, finds that an organization (X) that, as a substantial part of its activities, (i) makes assistance available exclusively to low-income individuals and families to provide part or all of the funds they need to make a down payment on the purchase of a home, (ii) offers financial counseling seminars and conducts other educational activities to help prepare potential low-income homebuyers for the responsibility of homeownership, (iii) ensures that the dwelling is inhabitable, (iv) structures its grant making process to ensure that its staff awarding the grants does not know the identity of the party selling the home or the identities of any other parties, (v) rejects any contributions that are contingent on the sale of a particular property or properties, and (vi) conducts a broad based fundraising program that attracts gifts, grants, and contributions from several foundations, businesses, and the general public qualifies for exemption from federal income tax under section 501(c)(3) of the Code.

However, in Situation 2, the ruling finds that an organization (Y) that is like X in all respects as set forth in Situation 1, except, (i) under Y's grantmaking procedures, Y's staff considering a particular applicant's application knows the identity of the party selling the home to the grant applicant and may also know the identities of other parties, such as real estate agents and developers, who may receive a financial benefit from the sale, (ii) 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, (iii) 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, (iv) Y does not conduct a broad based fundraising campaign to attract financial support. Rather, most of Y's support comes from home sellers and real estate-related businesses that may benefit from the sale of homes to buyers who receive Y's down

payment assistance does not qualify for exemption from federal income tax under section 501(c)(3) of the Code.

Rationale and Conclusion:

Based on the information you provided in your application and supporting documentation, we conclude that you are not operated for exempt purposes under section 501(c)(3) of the Code. An organization cannot be recognized as exempt under section 501(c)(3) unless it shows that it is both organized and operated for exclusively for charitable, educational, or other exempt purpose. You failed to meet the operational test of section 1.501(c)(3)-1(a)(1) and section 1.501(c)(3)-1(c)(1) of the regulation because you are organized for substantial private and commercial purposes, and operate in a manner that a private commercial entity operates. You also failed to provide an assurance that you do not inure net earnings in whole or in part to the benefit of private shareholders or individuals. See section 1.501(c)(3)-1(c)(2) of the regulations. Further details for this conclusion are set forth below.

First and foremost, the nexus of this adverse determination centers on the purpose that you are created under and the role that you take on for the related for-profit, M, that is owned by U, who is your founder, president, and chairman of the board. As you explained in your numerous responses, you are created to perform the work of your founder's private business: providing the financial training and affordable homes to low to mid income families and receiving the funds from the various governmental institutions.

However, the financial training and coaching, is outsourced back to M while your role is merely securing the clients and grants to pay M just like an organization in est of Hawaii, supra. In fact, you and M function as one organization: both organizations are controlled by U, share key employees and governing members, and use same office and equipment for the same line of business. Although you did not yet enter an official contract with M to build and renovate the homes you are going to sell and lease, you indicated that M will supply the homes and be involved in the process. Considering C's and M's involvement in real estate business and most of your governing members' involvement in the real estate and finance field, M will likely conduct all your activities. The court in est of Hawaii, supra, ruled against the organization that works with a for-profit entity for the reason of private and commercial purposes even if the organization is not directly controlled by the entity. In your situation, you have closer relationships and ties with M than the organization in est of Hawaii, supra, because your founder, U, has direct control over you and M without balances and checks in addition to your functioning for the benefit of M. Therefore, you did not establish that you are not organized or operated for the benefit of private interests. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Another distinct factor that you operate for private and commercial purpose is that all of your clients must go through the training and coaching program that is conducted by M. For example, a home buyer has to enroll in the training and coaching program of M to be in your home ownership program. Even though the training and coaching has educational aspects, it can not overcome the private and commercial purpose because requirements are obviously targeted to give private benefits to U, M, and other governing members of C and M. Therefore, you are similar to the organizations described in Housing Pioneers, Inc. v. Commissioner and Easter House v. U.S., supra, for the reason that your substantial purpose is helping the commercial private business.

Moreover, you have not demonstrated that you are not organized to serve private interests nor have you proved that your net earnings will not inure to private individuals. You have not demonstrated that the fee for financial training and coaching (\$2,194) per family which you will pay to M is not excessive and unreasonable. You have not provided a good reason why you selected the founder's firm for the financial training and coaching either. As to such points, you are similar to the organization described in Bubbling Well Church of Universal Love, Inc. v. Commissioner, supra. Like the organization in this case, you have not supplied evidence showing that the payments to M are reasonable. Even if excessive financial benefit to M did not happen, it is your burden to prove otherwise. (See Harding Hospital, Inc. v. United States and Section 4.03 of Rev. Proc. 2008-9, 2008-2 I.R.B., *supra*).

Among other major reasons for the adverse determination, you have not demonstrated that your housing program serves a charitable purpose. Charitable purposes include the relief of the poor and distressed. See section 1.501(c)(3)-1(d)(2) of the regulations. The organization described in Rev. Rul. 67-138 was recognized as exempt under section 501(c)(3) of the Code because it carried on several activities that were directed toward assisting low-income families obtain improved housing, including the purchasing of building sites for resale at cost. You are unlike the organization described in Rev. Rul. 67-138 because you do not limit the sale of the housing to low-income individuals and you intend to sell homes at market price. Indeed, 50% of your homes will be sold to non low income families at the price of comparables and appraisals conducive to purchasing a property as described in the above.

Furthermore, you are similar to the organization described in Rev. Rul. 70-585, Situation 4 that was 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). Your housing program is basically available to any moderate-income homebuyer who is qualified to purchase a house.

The organization described in Situation 1 of Rev. Rul. 70-585 was 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 described in Rev. Rul. 76-408 also formed to provide interest-free home repair loans to low-income individuals who were unable to obtain loans elsewhere. You are unlike these two organizations because you do not exclusively sell the housing to low-income individuals and you do not offer interest-free home loans. You do offer several mortgage programs for the homebuyers in connection with lenders and sellers, but none of your programs will not greatly reduce the burden of the low-income home buyers because your mortgage programs (illustrated above) are not much different from the commercial mortgage loans which are commonly available to everybody. Actually, some of your mortgage plans may be detrimental to the homebuyers since because mortgage payment substantially increase overtime.

You are similar to Airlie Foundation v. Commissioner because your housing program is applicable to its several "commerciality doctrine" factors. You compete with commercial real estate business, the pricing of homes are similar to the commercial business, and your housing development plan is no different from a commercial business's.

As part of your housing program, you provide downpayment assistance to the homebuyers. However, your assistance does not serve the charitable purpose under section 501(c)(3) of the

Code and you are similar to the organization Y in Situation 2 of the Revenue Ruling 2006-27. Indeed your downpayment assistance fits all of the four adverse aspects of the Situation 4 of the ruling because (i) the seller and the buyer are identified, (ii) the buyer receives a payment from the seller/lender, (iii) the sellers/lenders are required to contribute to cover the downpayment needed, (iv) for this downpayment assistance purpose, the seller/lender's contribution is the amount that the buyer receives.

You have some educational and charitable activities. However, your primary activities and purposes are non-exempt purposes and activities. 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 housing activities in a manner that is consistent with a commercial real estate firm rather than in a manner that would be consistent with a charitable or educational organization seeking to serve a charitable class. Your financial training and coaching program is contracted out to M to provide U private benefit. Furthermore, 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 according to Revenue Ruling 2006-27. With these non-exempt purposes and activities as your main activities, your exempt activities are not significant and substantial enough to overcome your non-exempt purpose and activities.

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 your proposed operations further the private interests of 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. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not 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 appeal 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.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Federal Bldg.
Room 7-008
Cincinnati, OH 45202

You may 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 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

Attachment
Publication 892