



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201017066**
Release Date: 4/30/10
Date: 2/2/10
UIL Code: 501.36-00
512.06-00, 534.00-00

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.

Since 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.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

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 S. 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: 2/2/10

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

D = Date

B = State

C = Board member

M = Applicant

N = Non profit organization

O = Housing developer

Q = Community

UIL No: 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.

ISSUE

Do you, M, qualify for exemption under section 501(c)(3) of the Code?

FACTS

You, (M) are a corporation formed on D, and operate pursuant to the laws of the State of B. Your Articles of Incorporation state:

"The corporation is organized and operated to promote the reduction of greenhouse gases and carbon emissions by encouraging homebuilding that utilizes energy efficient technologies, renewable fuels, and reduced consumption of raw materials and energy, thereby creating a healthier environment for all citizens. The corporation is organized and will be operated exclusively for charitable and educational purposes within the meaning of 501(c)(3) of the Internal Revenue Code. (All references

to section in these Articles refer to the Internal Revenue Code of 1986 as amended or to comparable sections of subsequent Internal Revenue laws.) In pursuance of these purposes it shall have the powers to carry on any business or other activity which may be lawfully conducted by a nonprofit corporation organized under the B General Statutes, whether or not related to the foregoing purposes, and to do all things necessary, proper and consistent with maintaining tax exempt status under section 501(c)(3)."

In your Form 1023 Application, you (M) describe your proposed activities as follows:

"[M] was founded to promote the increased development of "green" construction and the reduction of excessive consumption in the building industry. [M] is an independent nonprofit organization that is not associated with any developer, real estate agent or others involved in the building or selling of residential real estate, provides downpayment assistance to low- and moderate-income individuals and families that otherwise could not afford to purchase a high-energy-efficient home.... By providing down-payment assistance to low and moderate-income individuals and families that purchase residential homes certified by the Leadership in Energy and Environmental Design (LEED™) Green Building Rating System of the U.S. Green Building Council, [M] will achieve its educational and charitable purpose of promoting the increased development and purchase of highly-energy efficient homes."

In your application, you state that you plan to provide downpayment assistance to low and moderate income individuals and families to enable them to purchase LEED-certified "green housing". The downpayment assistance application will be reviewed by a committee unrelated to any applicant, funder, real estate professional or developer. The selection criteria include gross household income, current housing cost, monthly debt, equity/current home, assets, liabilities, estimated mortgage cost, and fund availability. The Service requested additional details of such criteria in the form of actual numbers in the inquiry letter of January 23, 2008. You responded to the questions. However, you did not provide further details by using actual numbers.

You also stated that all deeds of houses for which down payment assistance has been provided will be permanently deed-restricted so that the Property will continue to be affordable to persons and households of limited income. However, the deed rider sample attached with your Form 1023 application does not contain any income limitation for the buyers. It provides that you will have a right to locate a homebuyer if current homeowner sells the home. The home price will be determined at fair market value with some discount that will be determined at the time of signing the deed. There is no rule or determination factor specified for the discount amount in the deed.

In your letter of May 11, 2008, you stated that in order to achieve your purpose of promoting green building and a green lifestyle, you will require recipients of the subsidies to open their homes for tours and demonstrations of techniques that reduce energy consumption and cost. You further stated that your program is intended to help alleviate the shortage of "green housing" available to low and moderate income level families. You did not provide any details about the content, budget, schedule, location, personnel plan, and/or related agreements regarding the tours and demonstrations.

The sample downpayment assistance application form, which was provided with Form 1023, contains the following descriptions and applicant information.

- The purpose of grants is to encourage families who could not otherwise afford to purchase an energy efficient "green" home.

- Available housing grants to assist with the purchase of an LEED certified home are limited.
- The amounts of grants vary based on financial need of the applicant and the funding available. The anticipated amount is a maximum of 30-50% of the unit cost.
- Families with children are preferred.
- General applicant information, such as address, phone number, etc.
- Financial information of applicants.
- Home Preferences: One bedroom Quad w/ additional bedroom; Two bedroom Quad; Two bedroom Quad with additional upstairs bedroom; Two bedroom duplex; Two bedroom duplex with revised 2nd floor plan to create three bedrooms; three bedroom duplex; Other.

Additional details of the requirements and selection criteria were stated in correspondence. Beneficiaries must show the following:

- The beneficiaries' income and assets would not otherwise qualify them via conventional financing to purchase an LEED certified "green" home.
- The beneficiaries will commit to live and publicly promote a "green" lifestyle.
- The beneficiaries show that the home has been certified by LEED Green Building Rating System of the U.S. Green Building Council.
- The applicant agrees that the house deed will be restricted in the amount of the subsidy to insure that the applicant does not profit from the subsidy when the home is sold. [You provided a sample deed rider contract agreement that specifies various restrictions on sale, resale, transfer, and leasing of the house.]
- Factors that will affect the amount of the subsidy are; the beneficiaries' gross household income, income as percent of median income, current housing cost, monthly debt, equity/current home, assets, liabilities, estimated mortgage cost, and money available for down payment.
- The applicant will be expected to pay 30% of his/her monthly income for monthly payments.

A hypothetical example illustrates how the amount of subsidy is determined.

Income level - \$60,000

Family size - 4 (two adults, two children)

Price of LEED certified home - \$400,000

Price of similarly-sized non-LEED certified, traditional home - \$285,000

Expected traditional monthly mortgage on \$400,000 home with 10% down = \$2,500 = 50% + housing burden.

With a subsidy of \$100,000 added to the applicant's 10% downpayment, the monthly principal and interest on the resulting \$260,000 loan amount would be about \$1500 = 30% housing burden.

Housing burden is recommended not to exceed 30% of income.

Your anticipated income for 200 was \$ for 2009, it is \$ and for 201 , it is \$ You also planned to use the same amount that you earned each year. In our letters of January 23 and February 14, 200 we requested further breakdowns for the program expenses and the percentage of subsidy amount out of total expenses. In both instances, you did not provide the requested information. Instead you sent updates of the same data you included in the Form 1023 application.

You have three board members who live in or around Q. Among them, C was also a board member of N, a 501(c)(3) organization which leases land in Q from Q, a local green housing developer. According to your letter of March 28, 200 C resigned from the board of N due to "structural concerns associated with Q operating a housing subsidy program associated only with N." In your letter of October 8, 200 you further clarified this statement as follows:

"As you are aware, N is a nonprofit organization that applied for recognition of tax-exempt status under 501(c)(3) of the Internal Revenue Code in August, 200 ... N agreed to remove its housing subsidy program. Tax exemption was granted by IRS letter dated September 28, 200 Some of the board members of N, including Mr. C, remained committed to promoting green housing throughout the United States, including to individuals and families who, due to their lower incomes, could not afford the generally higher cost of purchasing an environmentally friendly "green" home. As a result Mr. C left the board of N and started a new organization, M to provide down payment assistance to low-and moderate-income individuals and families that otherwise could not afford to purchase a high-energy-efficient home. . . . "

In your letter of September 14, 200 you stated that the reason M and N use the same "Sample Deed Rider" is because the two organizations have the same legal counsel, and the counsel reused the model deed rider. You also stated that the reason that M offers its downpayment assistance for the exact same types of homes that N builds is as follows:

"When creating an assistance application for M, (*counsel*) reused the draft application from (*counsel's*) prior work with N. M's application and assistance is not limited to any particular type of unit. Other types of units may be listed under "other."

In your application, you stated that you plan on fundraising by soliciting donations from individuals interested in environmental issues, and by seeking both government and private foundation grants to help further your mission. The Service letter of January 23, 200 requested further details of your funding plans. However, you did not provide any details for planned fundraising. In your response of March 28, 200 you stated that you had not yet solicited for grants, and you admitted that you had not researched any funding sources as of that date.

LAW

Section 501(c)(3) of the Internal Revenue 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(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.

Reg. 1.501(c)(3)-1(d)(1) states, in part, that an organization is not organized or operated exclusively for one or

more exempt purposes "unless it serves a public rather than a private interest. Thus... it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests."

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions. Such term includes: "Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency." The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes.

Rev. Rul. 68-14, 1968-1 C.B. 243. By planting trees in public areas and assisting municipal authorities in their programs to plant trees and keep the city clean, the organization is lessening the burdens of government. The organization's informational program directed to the public, architects, and builders is educational. The overall effect of these activities is to combat community deterioration. Accordingly, the organization is exempt from Federal income tax under section 501(c)(3) of the Code.

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 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. It constructs new housing that is available to members of minority groups with low and moderate income who are unable to obtain adequate housing because of local discrimination. These housing units are so located as to help reduce racial and ethnic imbalances in the community. They are sold at or below cost to low or moderate income families or rented, with options to purchase, to families who cannot presently afford to purchase. Preference is to be given to families previously located in ghetto areas. The organization also informs the public regarding integrated housing as a means of minimizing potential misunderstanding and stabilizing integrated neighborhoods. It is financed by contributions from the general public and by funds obtained under Federal and State housing programs. Since the organization's activities are designed to eliminate prejudice and discrimination and to lessen neighborhood tensions, it is 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 charitable within

the meaning of section 501(c)(3) of the Code because its purposes and activities combat 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. 72-560, 1972-2 C.B. 248 By providing information to the public concerning environmental problems caused by solid waste materials and the advantages of recycling such materials, the organization is instructing the public on subjects useful to the individual and beneficial to the community. The recycling of the waste materials is an essential element in the organization's efforts to combat environmental deterioration, since it prevents the pollution of the environment caused by the usual disposition of these materials. These activities are thus analogous to the tree planting and street cleaning operations that were held to serve a charitable purpose in Revenue Ruling 68-14, C.B. 1968-1, 243.

Rev. Rul. 76-204, 1976-1 C.B. 152 In this case, by acquiring and preserving (whether by self-maintenance or through transfer to a governmental agency) ecologically significant undeveloped land, the organization is enhancing the accomplishment of the express national policy of conserving the nation's unique natural resources. In this sense, the organization is advancing education and science and is benefiting the public in a manner that the law regards as charitable.

Rev. Rul. 79-316, 1979-2 C.B. 228, held that an organization that provides prevention and clean-up of liquid spills in a city port was found exempt under section 501(c)(4) because it provided a benefit to the public by improving the environment. The ruling also provided that incidental benefits, such as better insurance rate that resulted from the organization's activities does not prevent recognition of exemption.

Rev. Rul. 80-278, 1980 2 C.B. 175, held that an otherwise qualifying organization that was formed to protect and restore environmental quality and whose principal activity consists of instituting litigation as a party plaintiff to enforce environmental legislation is operated exclusively for charitable purposes and qualifies for exemption under IRC 501(c)(3).

Rev. Rul. 2006-27, 2006-21 C.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 in 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.

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 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. 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 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* is structured and operated to assist private parties who are affiliated with its funders. Like the organizations considered in *American Campaign Academy*, *Easter House*, and *Columbia Park Recreation Association*, *Y* also serves an exempt purpose, but because *Y* is not operated exclusively for exempt purposes, *Y* does not qualify for exemption from federal income tax as an organization described in section 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. *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 this situation, the organization is operated exclusively for charitable purposes and qualifies for exemption from federal income tax as an organization described in section 501(c)(3).

Section 4.03 of Rev. Proc. 2009-9, 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.

In *Better Business Bureau v. United States*, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes. Thus, the operational test standard prohibiting a substantial nonexempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside the scope of section 501(c)(3).

In *Harding Hospital, Inc. v. United States*, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In *Church in Boston v. Commissioner of Internal Revenue Service*, 61 T.C. 102 (1978), the tax court held that the church did not satisfy the operational test of Treas. Reg. 1.501(c)(3)-1(c) because the church's grant program was a nonexempt activity that was more than incidental to its overall purpose. The court also affirmed the Commissioner's determination that the church failed to establish that its grant program constituted an activity in furtherance of an exempt purpose.

In *Dumaine Farms v. Commissioner*, 73, T.C. 650 (1980), in a ruling that was based on the educational and scientific aspects of the model farming operation, the Tax Court found that an operating farm and educational model that encouraged the practice of previously untried sound farming and soil conservation techniques that

the organization believed could be ecologically sound qualified as a charitable activity under IRC section 501(c)(3).

In Airlie Foundation v. Internal Revenue Service, 283 F. Supp. 2d 58 (2003), the court held that an organization that operated a conference center that promoted educational and cultural activities, in accord with its stated organizational purpose, did not qualify for tax exemption under IRC section 501(c)(3) because it was operated in a manner consistent with that of a commercial business.

APPLICATION OF LAW:

Charity vs. private benefit

Section 501(c)(3) provides that an organization must operate for one or more exempt purposes, and its net earnings must not inure in whole or in part to the benefit of private shareholders or individuals. Your primary activity consists of providing financial assistance to homebuyers who purchase a LEED certified home. In your case, you give downpayment assistance to any homebuyers who want to buy green housing without any income limitation. The only criteria you address is the limitation of a 30% housing burden for individuals. 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 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 regulations because you are organized for substantial private purpose and operate in a manner that will benefit private shareholders or individuals. The homebuyers, who receive financial assistance from you, privately benefit.

Sufficient information is needed.

As noted in section 4.03 of Rev. Proc. 2009-9 it is the responsibility of the applicant organization to demonstrate that it has met the operational test as specified under section 501(c)(3) of the Code by describing in detail 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. You did not provide the details about the proposed financial assistance program. You did not explain how your selection criteria will factor into the actual selection. In your response, you listed selection criteria without indicating how you apply such criteria. You were created to continue the down payment assistance program that N dropped in order to receive exemption under 501(c)(3), where N's target beneficiaries were the homebuyers of O's condominiums initially. You failed to provide an itemized list for the budgeted expenses for year 200 (\$) and 2010 (\$), even when we asked for the details of expenses repeatedly. You also state that you have a plan for some educational activities. However, you failed to provide the details of your educational activities, such as percentage and significance of the activity, or an educational methodology of the activity. You have failed to describe your proposed educational activities in sufficient detail to permit a conclusion that you will meet the requirements under IRC section 501(c)(3). Therefore, you have not demonstrated that your proposed activities will be exempt and that you are not operated to serve the private benefit of individuals.

As courts have ruled (Harding Hospital Inc. v. United States and Church in Boston v. Commissioner), it is incumbent upon an organization seeking a ruling recognizing its tax exempt status to carry the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact. The situations in Church in Boston v. Commissioner, have striking similarities with your situation in key exemption elements. The basis for the denial was twofold in this case. First, the petitioner's records of past grants did not demonstrate any criteria which constituted an exempt activity. Second, petitioner gave money with no legal obligations for repayment to its members and officers which resulted in a benefit to private shareholders or individuals. Another key resemblance is that the church failed to provide any evidence that its grants are for charitable purposes, just as you failed to provide any information that your downpayment assistance is limited to low-income individuals or that there is any

legal obligation for repayment. These bases very much summarize our position about the adverse course for your case as your downpayment assistances do not constitute exempt activity, and they result in private benefits to homebuyers. As determined in Better Business Bureau v. United States, the presence of a single substantial non-exempt purpose can preclude exemption under IRC section 501(c)(3).

Commerciality

You have stated that the purpose of your grants is to encourage families who could not otherwise afford to purchase an energy efficient “green” home. You assert that the homebuyers do not receive any eventual benefits by receiving downpayment assistance because of a “deed rider” that they sign to receive your assistance contains a “discount clause” which you can apply to discount the home price when they sell the home. However, you did not explain how this discount will be determined. Nor did you explain how the discount clause prevents the private benefit. Provisions of the “deed rider” are consistent with the details of a commercial transaction. The specific issues addressed in the multi page “deed rider”, including detailed obligations of the buyer, are concerned exclusively with commercial aspects of the agreement between the home buyer and you, such as increase in fair market value and recouping the monetary discount plus any profits, with no reference to environmental or “green” issues or educational activities. The specifics of your operation are similar to and in competition with other for-profit home selling enterprises. Entering into contracts to sell homes at a discount, and then recouping the dollar amount of the discount plus any increase in fair market value is using commercial methods to entice buyers to your product and using business techniques to recover both the cost and profits of the program. This constitutes another basis for disqualification of tax exemption. As courts have ruled in Airlie Foundation v. Internal Revenue Service, a conference center promoting educational and cultural activities did not qualify for tax exemption because it operated in a manner consistent with that of a commercial business.

Environment

While Rev. Rul. 68-14, Rev. Rul. 72-560 and Rev. Rul. 76-204 represent situations where organizations have been recognized as tax-exempt as a result of activities that promote or protect the environment, the activities of your organization are not similar. The organizations described in each of these revenue rulings provides a specific, direct environmental benefit to the public as a result of its activities (trees to combat community deterioration – Rev. Rul. 68-14, information on solid waste recycling – Rev. Rul. 72-560, acquisition and preservation of ecologically significant land – Rev. Rul. 76-204). Environmental benefits of your activities would be non-specific and indirect. The situation in Rev. Rul. 79-316 describes oil spills in a city port that are a tangible and direct harm to humankind and sea animals. Private benefit involved in this situation (in Rev. Rul 79-316) is totally different from private benefit in your case. The benefits that businesses might realize in this ruling are merely indirect benefits, such as lowered insurance rates, which are truly incidental and unavoidable in the accomplishment of the exempt purpose. The private benefit in your situation is direct money assistance to the limited group of people who wish to purchase green housing. The key difference between your situation and the situations of the organizations in these revenue rulings is that in these examples any indirect private benefits are inevitable and incidental to accomplishing the exempt purpose. However, you do not have a charitable purpose, nor are you the provider of a reasonable means to accomplish a charitable purpose as described in Rev. Rul. 80-278.

Finally, the Tax Court ruling in Dumaine Farms v. Commissioner, which found that an educational model farm promoting ecologically sound practices qualified for tax exemption, is not applicable as a precedent in your case. You did not provide a detailed description of your educational activities. The facts do not show education as a primary purpose. Rather, your primary purpose is to provide financial assistance to homebuyers.

Housing

Rev. Rul. 70-585 includes 4 situations involving organizations that provide housing. You are unlike the organizations that qualified for tax exemption as described in the first 3 situations:

in situation 1 because you do not construct or renovate existing homes or limit your assistance to low income families who could not obtain financing through conventional channels.

in situation 2 because you do not construct new housing for sale at or below cost to help reduce racial and ethnic imbalances in the community.

in situation 3 because you do not formulate plans for the renewal and rehabilitation of a particular community with median income below that of other sections of the city to combat community deterioration.

However, you are similar to the organization in the 4th situation, which did not qualify for tax exemption, because you also do not provide relief to the poor or further a charitable purpose..

Rev. Rul. 2006-27 provides 3 examples involving organizations that provide down payment assistance to home buyers. Although you have indicated that your down payment assistance program is conducted in accordance with situations 1 and 3, there are significant differences. You are unlike the organization described in situation 1 because you do not make assistance available exclusively to low-income individuals. In addition you have not described a program of financial counseling and other educational activities to help prepare low-income homebuyers for home ownership.

You also are unlike the organization described in situation 3 because you were not formed to combat community deterioration in an economically depressed area. You do not receive funding from government agencies, and you have not described a program of financial counseling and other educational activities to help prepare low-income homebuyers for home ownership.

APPLICANT'S POSITION

In your response, you explained the reasons why you qualify for tax exemption under IRC section 501(c)(3). The letter states:

"The organization's mission is to promote more building of 'green' homes and to promote living a 'green' lifestyle in an effort to slow down the deterioration of our environment through excessive consumption and greenhouse emissions. In addition, M is promoting 'green' housing for all, not just those with incomes above the median. To meet these goals, M plans to provide downpayment assistance to buyers who cannot otherwise afford to purchase a home built to LEED 'green housing' standards. The downpayment assistance limits and criteria have been developed so that the housing burden to purchase a LEED certified home will be no greater than the burden to purchase a home that is not built 'green', and so that the housing burden does not exceed the HUD recommended level of 30% of income."

The letter states, "M is similar to [Rev. Rul 2006-27] Situation 3 in that its provision of downpayment assistance is only part of its overall charitable and educational purpose of promoting 'green' building and 'green lifestyles'". Your letter further elaborates on your assertion that promoting green housing and lifestyle is charitable under section 501(c)(3) by citing the following precedents involving organizations that have been recognized as tax-exempt as a consequence of their environmental protection and/or preservation activities:

The 1994 article published by the Internal Revenue Service, "Environmental Preservation Issues" by Sadie Copeland and James Bloom, noted that it is generally recognized that efforts to preserve and protect the natural environment for the benefit of the public serve a charitable purpose under IRC 501(c)(3)

You continued to quote Rev. Ruls. 68-14, 72-560, 76-204, 79-316, 80-278, and Dumaine Farms v. Commissioner, 73 T.C. 650 (1980) to support your position. The following illustrates the key points of your comparisons and arguments that were offered in your favor:

Rev. Rul. 68-14: City beautification and preservation of environments are qualified activities under IRC section 501(c)(3).

Rev. Rul. 72-560: An organization formed to preserve the environment by educating the public on environmental deterioration due to solid waste pollution was recognized as tax-exempt under section 501(c)(3).

Rev. Rul. 76-204: Preservation of land is a qualified activity under IRC section 501(c)(3) even with limited access to the public.

Rev. Rul. 79-316: An organization formed to limit oil spills in a city port was found exempt and the benefits to private business members are incidental.

Rev. Rul. 80-278: The Service noted that while the purpose of an organization must be charitable, the means used to achieve the purpose does not have to be per se charitable as long as the means used is reasonably related to accomplishing the purpose.

Dumaine Farms v. Commissioner: The Tax Court found that promoting ecological practices, and educating the public through the operation of an experimental model demonstration farm as a conservation project and educational model served a charitable tax-exempt purpose, despite limited or no public access to the land or project.

You concluded your argument as follows:

“As a result, M has shown that its mission and programs support a recognizable charitable purpose, that of preserving our environment for the benefit of the health of our planet. Its means of doing so comply with IRS guidance and ruling, are legal and do not directly provide any financial benefit to any individual or other party. As a result, M should be recognized as a charitable and educational organization under section 501(c)(3) of the Internal Revenue Code.”

SERVICE RESPONSE TO APPLICANT'S POSITION

You assert that you are similar to the organizations in Situation 3 of Rev. Rul 2006-27. In this situation, financial assistance to the moderate income families overcomes private benefit to the individuals because the private benefits are incidental to accomplishing the direct exempt purpose of combating community deterioration. However, your support and private benefit to homebuyers is not incidental. In fact, any environmental benefit resulting from this subsidy is incidental to the direct private benefit. In Situation 3 of Rev. Rul 2006-27, the organization actually developed housing facilities in the deteriorated area to provide affordable housing and revitalize the depressed area. You provide financial assistance to buy any LEED certified houses already constructed by for-profit or non-exempt developers, without a focus on revitalizing a depressed or deteriorated area.

Although the 1994 article, “Environmental Preservation Issues” provides support for recognizing efforts to preserve and protect the natural environment for the benefit of the public can serve a charitable purpose under IRC section 501(c)(3), the activities described in the publication are related to the achievement of an organization’s primary purpose. Environmental benefits appear to be incidental to your primary purpose, which is providing financial assistance to homebuyers. You are not similar to the organizations recognized as tax-exempt in Rev. Rul. 68-14, Rev. Rul. 72-560, Rev. Rul. 76-204, Rev. Rul. 79-316 and the Dumaine Farms court decision because the organizations involved in these rulings have demonstrated that the primary purpose and result of the organization’s activity is conservation, preservation, remediation or improvement of the environment. However, benefit to the environment is incidental to your primary activity, which is providing a subsidy to the buyers of homes built by others as a for-profit, commercial activity. The impact from your “green” housing program is vague and indefinite, except when it comes to the direct private benefit resulting

from your downpayment assistance to any homebuyer. Again, the focus of the adverse determination does not concern whether preservation of the environment is a charitable activity as demonstrated in the cited revenue rulings. The nexus of our adverse determination is that your subsidy to the particular homebuyers conveys a substantial private benefit to homebuyers and developers.

You also are not similar to an organization described in Rev. Rul. 80-278. The organization in that revenue ruling does not provide any substantial private benefit to individuals. That is in contrast to your activities. Rev. Rul. 80-278 provides that while the purpose of an organization must be charitable, the means to achieve the purpose does not have to be per se charitable as long as the means used is reasonably related to accomplishing the purpose. However, the purpose must be charitable, and the means used to accomplish that purpose cannot be specifically identified as inconsistent with the Internal Revenue Code or Regulations, as is the private benefit associated with your activities.

CONCLUSION

In summary, your application and responses strongly demonstrate that your primary activity, a downpayment assistance program, is designed to benefit any individual and in so doing, furthers a nonexempt purpose. Since more than an insubstantial part of your activities further this nonexempt purpose, you have failed to establish that you operate exclusively for exempt purposes within the meaning of IRC section 501(c)(3). In addition, you also failed to establish that other activities will be exclusively educational. 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.

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*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and

correct.

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, 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 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

Attachment
Publication 892