



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201234030**  
Release Date: 8/24/2012

Date: May 30, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.00-00; 501.03-30; 501.32-00; 501.33-00;  
501.36-01

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,

Lois G Lerner  
Director, Exempt Organizations

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: April 5, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL #:s

501.00-00

501.03-30

501.32-00

501.33-00

501.36-01

Legend:

<u>D</u>	=	Date
<u>E</u>	=	State
<u>F</u>	=	Founder
<u>G</u>	=	Founder/Director
<u>P</u>	=	Name of Agency

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

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

**Issues**

- Does your activity of purchasing the mortgages on foreclosed properties from lenders, restructuring and holding those mortgages as mortgagee and receiving periodic payments from the borrowers of principal and interest constitute a

commercial business and therefore cause you to fail the operational test? Yes, for the reason explained below.

- Does your activity of making loans to debtors and the negotiating of loans on behalf of debtors cause you to be in contravention of section 501(q) and therefore cause you to fail to qualify for exemption under section 501(c)(3) of the Code? Yes, for the reason described below.

### **Facts**

Your formation was the brainchild of co-founders F and G who have been real estate investors since 1999. F and G became aware of the foreclosure problem while serving as financial counselors and establishing their own real estate business. Building on the foundation of their knowledge and experience in real estate investing F and G began to pursue their vision of helping people affected by foreclosure.

You were incorporated on D in E. Your Articles of Incorporation state that your purpose is to reduce the amount of foreclosures, both locally and nationally, by allowing homeowners to maintain ownership of their home with the help of creative intervention services. You amended your articles later to include an appropriate purpose clause that meets the requirements of section 501(c)(3) of the Internal Revenue Code.

Your bylaws state your purpose is to create opportunities for families to attain independence through home ownership by providing access to financial literacy training and intervention support services for the prevention of foreclosure.

You currently have three board members. You were founded by F and G who are related by marriage. They run and oversee your day-to-day operation. Both founders co-own several real estate investing and management companies. F currently works full time for you to make your vision a reality, and you will employ him as the full-time executive director. G is on your board with two other directors. One of those two directors is also in the real estate business. G intends to work approximately twenty (20) hours per week for you. Her duties will include providing accounting services, fundraising, negotiating for the purchase of defaulted mortgages from lenders, conducting individual meetings and group workshops for debtor education, and providing mortgage workout assistance to debtors. Two other directors will provide services for you on an as-needed basis. Your statement of revenues and expenses shows that your officers, directors, and trustees received compensation. Later you indicated that board members will not be compensated as an employee, president, counselor or a board member.

You purchase mortgages from lending institutions which are in default and heading into foreclosure. When possible, you purchase such defaulted mortgages in blocks at a discounted price. The distributions made to mortgage lenders to purchase the defaulted mortgages will allow you to intervene in the foreclosure process and negotiate mortgage workouts with the debtors. You will have written contracts with mortgage lenders for the

purchase of mortgages. You will use cold calls and direct mailings to mortgage lenders to determine which lenders have mortgages in foreclosure and wish to sell such mortgages. You will then negotiate with particular lenders regarding the terms of the sale of such mortgages to you.

You will target homeowners who are facing foreclosure or already in default of their loans across the country. Income levels of the homeowners will vary based on the geographic locations of their homes. The initial point of contact will be the lending institutions that will serve as your source for adopting a homeowner. Defaulted notes will be purchased by you from lending institutions and then restructured to enable homeowners to make affordable mortgage payments to you.

You do not put any price limit or other conditions on the home mortgages you purchase. After you have purchased the mortgage, you as a lender and mortgage holder, determine whether the homeowner's full intention is to stay in the home and maintain ownership or proceed with foreclosure. If the homeowner intends to stay in the home, you will provide homeownership counseling and work with the homeowner to establish a payment that they can afford. You will either reduce the interest rate, extend the term of the loan, reduce the principal balance or use any combination of these in order to help them keep their home. Terms will be established on a case-by-case basis according to what the family can afford. For example if the ARM Interest rate on a mortgage has been adjusted upward and has therefore become unaffordable you will adjust the rate back to the lower ARM rate. In cases where the home value has dropped below what is owed on the mortgage you would reduce the mortgage amount to the current value of the house.

Your mortgage buying process requires an inspection of defaulted mortgage notes that a lending institution is holding on their books. Once a list of the notes is inspected each note is evaluated, then you will make discounted offers in the form of "Letter of intent to purchase" for the lending institution to review. The lending institutions will act on all or a portion of the notes that they are interested in selling. At that time, the lending institution will provide to you a packet of documents and agreements (each lending institution will have their own set of documents and agreements) for you to review and sign. Once this packet is returned to the lending institution and all the required information and agreements are signed, the lending institution will draft an "approval of sale Letter" stating that they wish to proceed with the sale. If required, you will sign and notarize the approval letter and return it to the lending institution.

Some of the other steps in the process that occur after the signed agreements are completed are the search for the original note or a filing of an "Affidavit Lost Note" if only copies of the note exist. An "Allonge" document attached to the note identifies the promisor and the new owner as you in this instance. The final step is a Transfer of Lien or an "Assignment of Deed of Trust and Assignments of Rent" that is recorded at the courthouse. A Release of Lien will also be recorded to release the previous Deed of Trust on the property.

In the event that you have to foreclose on a home or the homeowner chooses not to own the home, you will foreclose the home and sell it to the public at the current market value. Such situations include; the homeowner abandons the property and is unreachable, the homeowner moves to another town or state, or the homeowner chooses not to make mortgage payments. You will then give the home buying opportunities to someone who has already lost their home to foreclosure or to a low to moderate-income family.

Your budget shows that you will spend approximately \$2 million, 4 million and 8 million in the first three years of operation for mortgage purchases. Almost all of your expenses (95%-98%) are for mortgage purchases. Your exempt purpose is carried out by providing defaulting homeowners with financial education, budgeting strategies, foreclosure prevention strategies and mortgage workout resolution.

You provided various sample notes, forms and agreements that are used for your mortgage purchase, foreclosure, and reposition activities. The samples include Transfer of Lien, Release of Lien, Allonge and Real Estate Lien Note, Affidavit of Lost Note and Indemnification, Mortgage Payment History Certification, Letter of Intent to Purchase Note, Approval of Purchase Letter, Escrow Collection Receipt and Instructions, Authorization for Reserve Account, Loan Servicing - Buyer and Seller Information.

As a part of providing the new mortgage to the homeowner, you plan to help the homeowners whose mortgage you purchase with homeownership counseling and referrals on employment information, mental health counseling, childcare, and educational services. The homeownership counseling consists of Intake and Action Plan, Budget Counseling, Credit Counseling, and Debt Reduction Counseling. You state that this financial and housing counseling occupies a substantial portion of your time.

You will host group workshops for small groups of homeowners who have defaulted on their mortgages and/or are threatened with foreclosure on their homes. You will conduct such workshops on weeknights and Saturdays at local libraries, other available conference rooms, or in your offices. The homeowners will be taught basic financial literacy including financial and credit terms, budgeting strategies, the importance of taking and maintaining a positive credit rating, the foreclosure process and various methods and procedure of foreclosure prevention. You state that this activity will consist of about ten percent of your time.

You will also assist the debtors in communicating with the debtors' mortgage lenders. You would use approximately ten percent of your time for this activity, which entails initiating workout negotiations and negotiating plans to allow debtors to keep their homes. Later you dropped this activity by stating that you are not going to work out payment solutions for your clients with lending institutions and clarified that you will only acquire the defaulted notes from the lending institutions and begin any financial counseling after the note is purchased and a restructure process has begun.

You will hire P an independent title insurance agency to perform your account servicing under a service agreement. P will receive payments, take care of impound accounts, 1098 forms and late notices etc.

## Law

Section 501(a) of the Code provides that an organization described in section 501(c)(3) shall be exempt from taxation.

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 501(q) of the Code provides that organizations which provide "credit counseling services" as a substantial purpose shall not be exempt from taxation under section 501(a) unless they are described in sections 501(c)(3) or 501(c)(4), and they are organized and operated in accordance with the following requirements:

(1)(A) The organization--

- (i) provides credit counseling services tailored to the specific needs and circumstances of consumers,
- (ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,
- (iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
- (iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.

(1)(D) At all times the organization has a board of directors or other governing body

- (i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,
- (ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of

consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

Section 501(q)(4)(A) defines, for purposes of section 501(q), the term "credit counseling services" to mean (i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; (ii) the assisting of individuals and families with financial problems by providing them with counseling; or (iii) a combination of the activities described .

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subsection, 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 provides that the term "charitable," is used in section 501(c)(3) in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational," as used in section 501(c)(3) of the Code, relates to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a non-profit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was



exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit with films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling and, if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, holding the funds in a trust account and disbursing the funds on a partial payment basis to the creditors. The organization neither charged fees for counseling services nor prorated their services. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization's budget plans, for its support. Creditors were not required, though, to make such contributions as a condition of participation.

The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (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."

In American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962), the Court considered an organization that provided analyses of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The court noted that education is a broad concept, and assumed *arguendo* that the organization had an educational purpose. However, the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was indicative of a business. Therefore, the court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose, and was not entitled to be regarded as exempt.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial.

In addition, the court found that the organization's financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." Finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

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, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the Claims 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 non-exempt 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 Living Faith, Inc. v. Commissioner, 950 F.2d 365 (1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under section 501(c)(3) of the Code because the organization was operated for a substantial non-exempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the District 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. As the court stated: "Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, among other things, whether the organization uses

commercial promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations."

In Solution Plus, Inc. v. Commissioner, T.C. Memo. 2008-21, the Tax Court held that a credit counseling organization was not described in section 501(c)(3) because it was not organized and operated exclusively for educational or charitable purposes and impermissibly served private interests. The organization was formed by an individual with experience selling debt management plans ("DMPs"). The founder and his spouse were the only members of the organization's board of directors. The organization did not have any meaningful educational program or materials to provide to people who contacted the organization, and its financial education seminars for students constituted an insignificant part of the organization's overall activities.

## **Application of Law**

### Operational Test

To satisfy the operational test under section 501(c)(3) of the code an organization must engage primarily in activities that accomplish one or more of such exempt purposes as specified in section 501(c)(3) of the Code and Section 1.501(c)(3)-1(c)(1) of the regulations. Under the operational test, the purpose towards which an organization's activities are directed, and not the nature of the activities themselves, is ultimately dispositive of the organization's right to be classified as a section 501(c)(3) organization. As in B.S.W. Group, Inc. v. Commissioner, your activities are not directed toward one or more exempt purposes. Your activities primarily further the substantial non-exempt purpose of operating a mortgage loan and home sale business. Thus, you are not operated exclusively for one or more exempt purposes.

### You Are Not Operated Exclusively for Charitable or Educational Purposes

Your primary purpose of purchasing mortgages in default and working with the debtors subsequent to such purchasing to assist them with foreclosure intervention is not a charitable purpose as described in section 1.501(c)(3)-1(d)(2) of the regulations. The fact that you do consultations with the debtors whose mortgages you have purchased either through phone calls or face to face interviews is also not educational since the purpose of these interviews are to determine if these debtors will eventually become your clients. Conducting a mortgage lending business to the general public does not serve a charitable purpose.

Almost all of your time and resources are devoted to conducting a mortgage loan business and providing subsequent financial counseling as part of the loan business to any individual who is facing foreclosure or already in default on his loan. Thus, you are unlike the organization described in Rev. Rul. 69-441,

You are not educational as described in section 1.501(c)(3)-1(d)(3)(i) of the regulations. Any educational activity you offer is only incidental to your primary activity of operating a mortgage loan business. You are similar to the organization described in Solution Plus, Inc. v. Commissioner of Internal Revenue, above, in that your activities are the conduct of a mortgage loan business. Any educational activity you conduct is incidental to your mortgage loan business.

#### You Have a Substantial Non-exempt Purpose

Your Form 1023 application and responses strongly demonstrate that Like the organization in Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), above, you operate for the substantial non-exempt purpose of operating commercial mortgage loan business.

Your mortgage loan business is no different from that of a commercial lending business. You set the mortgage payments in the manner that commercial lenders would do for homes that face foreclosure, you foreclose on homes when the homeowners do not make payments, and you sell foreclosed homes to the general public at market price. Your mortgage lending business directly competes with commercial lending entities. You are similar to the organizations in Easter House v. U.S. and Living Faith, Inc. v. Commissioner, above,

As in Airlie Foundation v. Commissioner, above, your commercial lending business is a classic case involving the commerciality doctrine.

Similar to the organization in American Institute for Economic Research v. United States, above, your commercial activity of selling mortgage products and homes serves a significant non-exempt purpose and any educational purpose is incidental thereto. Therefore you are not entitled to exemption under section 501(c)(3) of the Code.

#### Inurement/Private Benefit

You operate for the private benefit of your founder and his spouse by using funds raised to support their mortgage loan business. You use funds raised by you to purchase mortgages and operate a commercial lending business. F and G your founders operate the business day to day. Your organizational structure and manner of operation result in inurement to F and G. Funds raised by you will be used to operate a mortgage lending business which will be operated on a day to day basis by F and G. In accordance with section 1.501(c)(3)-1(d)(1)(ii) of the Regulations you have not established that you are not operated for your founders' private interests.

#### Section 501(q) of the Code

You are described in section 501(q) and 501(q)(4)(A) of the Code as an organization that provides credit counseling services.. However, you are not in compliance with the

provision of section 501(q)(1)(A)(ii) of the Code since you make loans to debtors at specified rates of interest and negotiate the making of loans on behalf of debtors.

F & G are founders and are in charge of your operations. F works full time for you. G and another member of your board is also in the real estate business. Therefore, your governing body does not comply with the requirements of section 501(q)(1)(D)(ii). G's presence on the board that is comprised of 3 board members gives G 33% of the voting power and since 2 of the three board members have relationships with other real estate related businesses you also do not meet the requirements of 501(q)(1)(D)(iii) since more than 49% of voting power is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities,

### **Conclusion**

Based on the facts and information provided, you are not operated exclusively for exempt purposes because your activity of purchasing the mortgages on foreclosed properties and holding and servicing those mortgages constitutes a commercial business. Therefore, you are not described in section 501(c)(3) of the Code. In addition the making and negotiating of loans on behalf of debtors causes you to fail to meet the requirements of section 501(q).

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](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to 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: Deliver to:

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

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,

Lois Lerner  
Director, Exempt Organizations

Enclosure, Publication 892