



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200610029**
Release Date: 3/10/06
213071/SE:T:EO:RA:T2

Date: 12/13/05

Uniform Issue List:
501.00-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear _____ :

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

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

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

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

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
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: 10/14/2005

Uniform Issue List: 501.00-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M =

State =

Date =

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below. This letter supersedes our letter dated March 8, 2001.

Facts:

You are a State Nonprofit Corporation formed on Date. Your Articles of Incorporation state that you are organized exclusively for purposes specified in section 501(c)(3) of the Internal Revenue Code, and specifically, to expand, develop and maintain the supply of quality affordable housing through charitable assistance to members of the public with low to moderate household income for home buyer assistance; to lessen the burdens of federal, state and local government by increasing housing availability and affordability; and to restore communities that are in deterioration.

Your Form 1023 Application provides that you will provide down payment assistance to buyers who enter into a sales contract with a seller who agrees to pay a service fee to you of 4 percent of the contracted sales price. Through this program, you will provide gift funds for down payment assistance and closing costs of up to 3 percent of the contract sales price of a Participating Home to Qualified Buyers purchasing the Participating Home using an Eligible Loan Program.

You prepared a program home ownership manual which you provided with your Application. It defines a Qualified Buyer as one (a) that purchases a home using an Eligible

Loan Program; (b) completes an approved Home Ownership Counseling Course; (c) can contribute a minimum of 1 percent of the funds toward closing costs or cash reserves; and (d) purchases a Participating Home. Not stated as a requirement to be a qualified homebuyer is that the buyer be classified as low income under the HUD regulations. However, you stated in correspondence to the IRS in regard to your Application that you will target assistance to low income and very low income individuals and families under the HUD guidelines tied to median income of an area, and that you will amend your manual and other documents to reflect this.

You indicated in correspondence that you do not offer the homeownership course; however, you provide a list of approved courses to take. The certificate of achievement is forwarded to you by the course provider.

You stated in correspondence dated August 8, 2003, that you plan to urge the buyer to have the participating home inspected by a licensed home inspector prior to purchase following receipt of all necessary qualifying documents. You will also require the lender or escrow entity to provide proof that the seller's property meets FHA guidelines and the seller has purchased a home protection insurance policy, to cover unforeseen major repairs on behalf of the buyer. You stated that you have not set a minimum amount of coverage required for the home protection plan, but you agree that it must be sufficient to cover the repair and/or replacement of items covered in a home protection plan policy. You further stated in the August 8, 2003, correspondence that through their industry guidelines, the insurance company will determine the amount of coverage needed to pay for those events should they arise. You indicated that a Roof Certification must be provided by a licensed inspector.

You stated in your letter of August 8, 2003, that you will work to promote the program to the public at large to identify interested qualified buyers. You stated that you want to provide information about the program and the criteria that would qualify an individual for a down payment assistance grant through any appropriate means. You plan to utilize various marketing vehicles to reach buyers, sellers, realtors, mortgage companies and escrow entities. These will include personal contact to disseminate program information and informational material. You will endeavor to present the program to organizations and at community gatherings, church groups, civic groups, public and private companies and corporations, neighborhood groups, as well as various forms of the media. The relationship you will have with real estate agents, mortgage lenders, home sellers or home builders, would be one as a participant in the program and representing a participating qualified buyer.

The Manual defines a Participating Home as a home owned by a seller who has entered into a Participating Home Agreement (or in the case of a builder, an Affordable Housing Services Agreement) with you. Under the agreement, the seller agrees to pay a service fee to you within 3 business days after closing. The seller is only obligated to pay the service fee if a buyer purchases the subject property and successfully closes and records. The seller is not obligated to pay the service fee if the closing/escrow is terminated. The service fee is equal to 4 percent of the contract sales price for the Participating Home and is not negotiable. You stated that there is no restriction on where a participating home can be located; location is driven by the market place. The Manual notes that benefits to the seller include an increased pool of qualified potential buyers, the ability to sell a home faster, and the ability to know that the buyer is credit-approved at the time of the contract.

The seller agrees to satisfy your standards with respect to the condition of the property at the time of sale to a qualified buyer and upon the sale of the property, to pay you a service fee for your efforts to provide an increased pool of qualified potential buyers. Licensed real estate agents list Participating Homes under your program using Participating Home Agreements and assist buyers in making offers to sellers contingent upon sellers signing a Participating Home Agreement. Real estate agents submit completed, original Participating Home Agreements to the Lender. The Lender will forward this agreement, and all other program required documents to you, as received.

An Eligible Loan Program is any single family mortgage loan product that permits charitable organizations to provide gift funds toward a buyer's down payment and closing costs and has been approved by you. The lender determines the amount of gift funds the buyer will require from you in order to complete the purchase transaction. The lender sends you a copy of the completed original grant application, along with a copy of the application for mortgage loan. The mortgage application contains the necessary income information of the buyer. The lender is also responsible for noting the source of buyer's 1 percent funds toward the purchase on the grant application.

Your Manual provides that the lender determines the amount of gift funds the buyer will require from you in order to complete the purchase transaction. The lender submits a faxed copy of the completed original Grant Application to you, along with a copy of the Application for Mortgage Loan. The lender is also responsible for noting the source of the buyers 1 percent funds toward the purchase on the Grant Application. The requested amount of gift funds cannot exceed the 3 percent of the contract sales price of the subject property.

A closing office is an entity (e.g., a title company, an escrow company, or a law firm) that has been approved by you to receive wire fund transfers of gift funds from you. You will forward program guidelines and wiring instructions (including a closing office identification number) to the closing office. The closing office is responsible for ensuring that items set forth on the gift funds request form are forwarded to you, that the gift funds have been received from you and applied toward the buyer's home purchase, and that the service fee has been disbursed to you.

You require the following documents to be delivered to the Lender. It is the Lender's responsibility to ensure that you receive all required documentation at least 48 hours prior to closing. These include:

1. Grant application signed by buyer(s), funding reservation form, 1003 Application for Mortgage Lending, and closing office wire instructions. The buyer must fully complete and sign the grant application. Information regarding the income level of the buyer appears on the 1003 Application for Mortgage lending.
2. Signed gift letter. This letter is signed by you and provided to the buyer, lender, and real estate agents with the understanding that the buyer will receive gift funds once the conditions outlined in the letter are satisfied.
3. Certificate of Achievement. This is a certificate that the buyer receives by successfully completing an approved homebuyers educational counseling course or seminar.

4. Copy of the Purchase and Sale Agreement signed by buyer and seller. The real estate agent will provide a copy to the lender who will send it to you.
5. Participating Home Agreement. This is completed and signed by the seller, delivered to the lender by the real estate agent.
6. Evidence of Home Protection Plan coverage. The seller is responsible for paying for the home protection plan's standard coverage. If the subject property has an HVAC system, the seller must provide additional coverage for the system.
7. Gift Funds Request for resale or new homes. This is the responsibility of the closing agent. The documentation must be delivered to you at least 2 business days prior to the requirement of gift funds. Upon receipt of the request, you will forward, via facsimile, the program control number and service fee demand. Prior to closing, you will wire the necessary funds.
8. Certified Copy of Closing/Settlement Statement Signed by Sellers. This is the responsibility of the closing agent. A closing/settlement statement showing the service fee payable to you upon close of escrow must be faxed by the closing agent to you. The closing statement must specifically detail that it is a service fee to you. The amount is always 4 percent of the contract sales price.
9. At closing, the closing agent is required within 3 days of close, to wire the service fee to your specified account number, and to send a copy of the completed HUD-1 statement.

Your proposed financial information shows that your primary source of funds will be from the fees paid by the home sellers. You will also seek some donations from individuals and organizations that are involved in and/or affected by the charitable programs operated by you. Your proposed financial information shows that home seller fees will account for approximately 99.8 percent of your anticipated income and donations will account for approximately 0.2 percent of your anticipated income.

In your application and again in your letter dated July 15, 2001, you represent that you operate in a manner similar to a certain specified organization. The manner in which you and that organization operate is referred to as "seller-funded downpayment assistance" in the Final Report, *An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations*, commissioned by Office of Housing, United States Department of Housing and Urban Development, HUD Contract No: C-OPC-22550/M0001 (March 1, 2005). The report concludes that seller-funded downpayment assistance for mortgage downpayments has led to underwriting problems that require immediate attention. Furthermore, the report concludes that the effective costs of homeownership are increased even more by the processing fees charged by the seller-funded downpayment assistance providers which get passed through to borrowers in higher property prices. A copy of the report is enclosed with this determination letter.

Applicable Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes, provided no part of the net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3) of the Code. An organization must not engage in substantial activities that fail to further an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as used in section 501(c)(3) of the Code as including the relief of the poor and distressed or of the underprivileged. The term "charitable" also includes the advancement of education.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides, in part, that the term "educational" as used in section 501(c)(3) of the Code relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization that operates a trade or business as a substantial part of its activities may meet the requirements of section 501(c)(3) of the Code if the trade or business furthers an exempt purpose, and provided the organization's primary purpose does not consist of carrying on an unrelated trade or business.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not

operated exclusively for purposes described in section 501(c)(3). Easter House, 12 Cl. Ct. at 485-486.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the court held that an organization that operated a school to train individuals for careers as political campaign professionals, but that could not establish that it operated on a nonpartisan basis, did not exclusively serve purposes described in section 501(c)(3) of the Code because it also served private interests more than incidentally. The court found that the organization was created and funded by persons affiliated with Republican Party entities and that most of the organization's graduates worked in campaigns for Republican candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting Republican candidates and entities. Although the candidates and entities benefited were not organization "insiders," the court stated that the conferral of benefits on disinterested persons who are not members of a charitable class may cause an organization to serve a private interest within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. The court concluded by stating that even if the Republican candidates and entities did "comprise a charitable class, [the organization] would bear the burden of proving that its activities benefited members of the class in a non-select manner."

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

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

Rev. Rul. 67-138, 1967-1 C.B. 129, holds that helping low income persons obtain adequate and affordable housing is "charitable" because it relieves the poor and distressed or underprivileged. The organization carried on several activities directed to assisting low-income families obtain improved housing, including (1) coordinating and supervising joint construction

projects, (2) purchasing building sites for resale at cost, and (3) lending aid in obtaining home construction loans.

Rev. Rul. 70-585, 1970-2 C.B. 115, discusses four examples of organizations providing housing and whether each qualified as charitable within the meaning of section 501(c)(3) of the Code. Situation 1 describes an organization formed to construct new homes and renovate existing homes for sale to low-income families who could not obtain financing through conventional channels. The organization also provides financial aid to eligible families who do not have the necessary down payment. When possible, the organization recovered the cost of the homes through very small periodic payments, but its operating funds were obtained from federal loans and contributions from the general public. The revenue ruling holds that by providing homes for low-income families who otherwise could not afford them, the organization relieved the poor and distressed.

Situation 2 describes an organization formed to ameliorate the housing needs of minority groups by building housing units for sale to persons of low and moderate income on an open-occupancy basis. The housing is made available to members of minority groups who are unable to obtain adequate housing because of local discrimination. The housing units are located to help reduce racial and ethnic imbalances in the community. As the activities were designed to eliminate prejudice and discrimination and to lessen neighborhood tensions, the revenue ruling holds that the organization was engaged in charitable activities within the meaning of section 501(c)(3) of the Code.

Situation 3 describes an organization formed to formulate plans for the renewal and rehabilitation of a particular area in a city as a residential community. The median income level in the area was lower than in other sections of the city and the housing in the area was generally old and badly deteriorated. The organization developed an overall plan for the rehabilitation of the area; it sponsored a renewal project; and involved residents in the area renewal plan. The organization also purchased apartment buildings that it rehabilitated and rented at cost to low and moderate income families with a preference given to residents of the area. The revenue ruling holds that the organization is described in section 501(c)(3) of the Code because its purposes and activities combated community deterioration.

Situation 4 describes an organization formed to alleviate a shortage of housing for moderate-income families in a particular community. The organization planned to build housing to be rented at cost to moderate-income families. The Service held that the organization failed to qualify for exemption under section 501(c)(3) of the Code because the organization's program did not provide relief to the poor or further any other charitable purpose within the meaning of section 501(c)(3) and the regulations.

Rev. Rul. 72-147, 1972-1 C.B. 147, holds that an organization that provided housing to low income families did not qualify for exemption under section 501(c)(3) of the Code because it gave preference to employees of business operated by the individual who also controlled the organization. Although providing housing for low income families furthers charitable purposes, doing so in a manner that gives preference to employees of the founder's business primarily serves the private interest of the founder rather than a public interest.

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 exclusively for charitable, education, or other exempt purposes. Among other things, the application and supporting documentation must demonstrate conclusively that the organization meets the operational test of section 1.501(c)(3)-1(c) of the regulations. Your information indicates that your primary purpose is to operate a down payment assistance program that does not exclusively serve a purpose described in section 501(c)(3).

Charitable purposes include relief of the poor and distressed. See section 1.501(c)(3)-1(d)(2) of the regulations. However, you do not conduct your down payment assistance program in a manner that establishes that your primary purpose is to address the needs of low-income grantees by enabling low-income individuals and families to obtain decent, safe housing. See Rev. Rul. 70-585, Situation 1.

You rely on an independent inspector's evaluation and do not primarily consider those applications for assistance for homes that meet your particular standards for habitability. You also do not engage in any substantive review of the financial health of applicants to ensure that they will be able to afford to maintain the house over time. Instead, you rely solely on the mortgage lender, insurance agency, home inspector or other third party to conduct such review. While you indicate that you require completion of an education program, you do not provide oversight or conduct any other activity to ensure that buyers are purchasing properties that are safe, decent, sanitary, and affordable. This also distinguishes your situation from that described in Rev. Rul. 67-138.

You have not demonstrated that your down payment assistance program exclusively serves any other exempt purpose such as combating community deterioration and lessening racial tensions. For example, you have not shown that your program is designed to attract a mixed-income group of homeowners to a specifically defined geographical area that has a history of racial problems. See Rev. Rul. 70-585, Situations 2 and 3. Your information indicates that you do not limit your assistance to certain geographic areas or target those areas experiencing deterioration or racial tensions. Arranging the purchase of homes in a broadly defined metropolitan area does not combat community deterioration within the meaning of section 501(c)(3) of the Code. See Rev. Rul. 70-585, Situation 4.

Only an insubstantial portion of the activity of an exempt organization may further a nonexempt purpose. As the Supreme Court held in Better Business Bureau of Washington D.C., Inc. v. United States, *supra*, the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. You conduct your operations in a manner that is consistent with a commercial firm seeking to maximize sales of services, rather than in a manner that would be consistent with a charitable or educational organization seeking to serve a charitable class or the public at large. The manner in which you operate your down payment assistance program indicates that you facilitate the sales of homes in a manner that is indistinguishable from an ordinary trade or business. You operate a business that provides services to home sellers for which you charge a market rate fee. For example, your information and literature explains how the seller will benefit

from your program by decreasing sales time, increasing the buying pool and overall, achieving the maximum sales price for their home by not having to reduce the sales price. This type of approach helps to demonstrate that your primary purpose consists of maximizing the fees you derive from facilitating sales of real property. In this respect you are similar to an organization which was denied exemption because it operated a conference center for a commercial purpose. See Airlie Foundation, Inc. v. U.S., 92 A.F.T.R.2d (RIA) 6206 (D.D.C. 2003). Likewise, operating a trade or business of facilitating home sales is not an inherently charitable activity. Thus, a substantial part of your activities further a nonexempt purpose.

Another indication of your substantial nonexempt purpose is your lack of public support. Your revenues come from the sellers' you serve. That you substantially operate to promote and to further your private business interests is reflected in the financing structure of your down payment assistance program. Your proposed financial statement shows that your primary source of support will be from sellers' fees; only a de minimis amount of support will come from donations, and these are targeted from individuals and organizations that will benefit from your programs. In this respect you are similar to the organization described in Easter House, supra, which derived most of its support from fees it charged for its adoption services. In this case, the court stated that the substantial fees were not incidental to the organization's exempt purpose because they were designed to make a profit. Facilitating home sales, like running an adoption service, is not an inherently charitable activity, and receiving support primarily from fees charged to home sellers is indicative of your commercial purpose.

Even though your program is directed to exclusively low-income individuals, your reliance entirely on home sellers to finance your down payment assistance activities demonstrates that you are operated for the purpose of benefiting private parties. Your grant making procedures indicate that gift funds are only provided if a seller has paid a service fee to you. Upon the closing of the sale, the sellers' service fee paid to you is returned to seller as part of the proceeds the seller receives from the sale of the home.

You admit that the sellers pay a fee in exchange for the sale of a service. Your information indicates that procedures followed by you, the lender, and the real estate agent is intended to be able to take into account whether there is a home seller willing to make a payment to cover the down payment assistance an applicant has requested. The fact that the payment requested from the home seller is the amount corresponding to the amount of the down payment assistance provided, and that seller payments are contingent on the sale of a particular property indicates that the benefit to the home seller is not a mere accident but rather an intended outcome of your operations. In this respect, you are like Easter House, supra, which provided health care to indigent pregnant women, but only when a family willing to adopt a woman's child sponsored the care financially. Similar to American Campaign Academy, supra, you are structured and operated to directly benefit the home sellers who pay for your services. Therefore, a substantial part of your activities serve a private rather than a public interest.

Based on the facts and information submitted, you are not operated exclusively for exempt purposes. Your proposed operations further a substantial nonexempt business purpose and will further the private interests of home sellers and other private parties. Therefore, you are not described in section 501(c)(3) of the Code.

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

Contributions to you are not deductible under section 170 of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter to the address given at the end of this letter. We will carefully consider your statement. If your statement convinces us that our adverse determination was not correct, we will advise you about our reconsideration.

If it is more convenient, you may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please contact the person identified in the heading of this letter by telephone to confirm that he or she received your fax. 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 to you.

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

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

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

Please send your protest, Form 2848 and any supporting documents to this address:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:2)
1111 Constitution Ave, N.W.
Washington, DC 20224

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure(s)

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