



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200634042**
Release Date: 8/25/2006
Date: April 10, 2006
UIL: 501.00-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Legend:

A =

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. On February 6, 2006, we notified you that your letter of January 10, 2006, signed by A as "Current Volunteer and former CEO and Executive Director," could not be accepted as a valid protest to the proposed denial since it appeared to indicate that A was no longer an officer of the organization. We provided you with an additional 30 days to provide a valid response. Since we did not receive a validly signed 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



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 12/13/2005

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Uniform Issue List 501.00-00

Legend:

M =
State =
Date =

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.

You, M are a State non-profit corporation, formed on Date. Your Articles of Incorporation state that you are organized and operated exclusively for charitable, religious, educational and scientific purposes. Your application Form 1023 provides that your purpose is "to increase, preserve and promote home ownership through consumer education, down payment assistance, cash grants, matching funds, charitable contributions, and other activities."

Your Bylaws provide that you are a membership organization. However, your Bylaws provide that until M has x members, members are not allowed to vote on any matters. You indicated that your current membership is significantly below this number. Your long term goal is to build a "vibrant membership base that pays annual dues, makes donations, volunteers at activities, and generally works to support [your] home ownership mission." You further state that have not established the roles of members beyond what is stated in your Bylaws or your initial plans.

Your application Form 1023 provides that you will engage in the following activities:

1. Provide homeowner education by using volunteer and/or staff members to explain the home purchasing and financing process to consumers.
2. Operate a down payment assistance program providing gifts of up to 6% of the sales price of a home to the buyer.
3. Solicit mortgage lenders and brokers for charitable contributions by advocating anti-predatory lending policies.

You state that your educational mission is to help consumers through the financial maze of home ownership. You state that you plan on providing volunteer and/or M staff members to explain the home purchasing process to potential buyers. You will also distribute educational materials via mail and Internet. You also state that you will provide internet-based tools to help consumers compare mortgage options and products. In addition, you will organize community seminars as well as address problems with consumer credit reports. You state that you will not charge a fee for counseling or any of your educational services.

The information you submitted states that you administer a downpayment assistance program to link cash-challenged home buyers with available funds through the Internet. You state that you will find potential buyers and sellers through personal contact, Internet activities and promotional events and activities. You state that your program benefits buyers by allowing them to purchase a home with little or no out of pocket expense.

Eligible participants will be evaluated by M staff upon receipt of the request for funds. The staff will determine if the grant is consistent with its mission of promoting home ownership. You state that you require applicants to note the reason why he or she is requesting a grant. You state that your criteria for an eligible buyer includes the following: (1) first-time homebuyers; (2) persons wishing to move to a better neighborhood; (3) persons need to purchase homes closer to jobs; (4) persons purchasing larger homes due to an expanding family; (5) persons using FHA or other government loans; and (6) for any other bona fide reason. You state that when a recipient identifies FHA or other government loan program on their application, you rely on the guidelines under those programs to indicate that the applicant is eligible for a grant. You further state that the "seller's willingness to make a reimbursing contribution along with compliance with the lender's guidelines demonstrates that the buyer needs and deserves downpayment assistance." In your letter of March 24, 2005, you state that you will focus your program on first-time home buyers and renters, single parent families, foster homes, medically challenged individuals, military personnel and their families, recent college graduates with student loans, minority families and recent immigrants.

You indicate that grants will come from a pre-existing pool of funds and the program is "reciprocal." You state that this means that the seller of the home for which the buyer is getting down payment is generally required to agree to make a contribution to you in the amount of the grant plus a service fee. You state that this contribution may also come from the real estate agent. You state that the seller's donation will replenish the pool of funds for the next home buyer. You state that you program benefits home sellers by increasing their pool of potential buyers.

In your letter of March 24, 2005, you describe a typical down payment assistance transaction as including the following steps:

1. Engage in personal contact, Internet activities and promotional events and activities to find potential buyers and sellers.
2. A buyer and/or seller complete the "Seller's Participation Agreement Form," a one-page form to either request assistance or to enroll the home. The section of the form to request assistance provides a series of "reason(s) for assistance request." The "reasons" include first-time homebuyer, outgrown existing home, move to better/safer neighborhood, FHA loan, other government loan and an open category for a description of the reasons for the request.
3. The form is reviewed by M staff members. Staff looks to see which reason for requesting assistance has been checked off by the participant.
4. If approved, M issues confirmation of the grant to the recipient and other parties.
5. M coordinates delivery of the grant funds to the closing agents and takes necessary steps to ensure delivery of the funds.
6. After the grant funds are sent, M tracks the file to ensure that funds are received and the home purchased.

If closing is successful, the closing agent will disburse seller's "gift" to you. You state that you do not have a provision for refunding a contribution and that any such request would be handled on a case by case basis. You state that the seller's contribution is directly tied to the buyer's down payment gift and that it is equal to the amount of the gift provided to the buyer. You also state that the seller's contribution is contingent on the sale of the home to a buyer using your program. You state that you rely on the appraisal and underwriting standards of the lender to assure that a property safe, decent, sanitary and affordable that that you make no determination or recommendation on a home's price or value. In addition, you indicate that you would probably provide a "gift basket" at closing containing donated goods or coupons for free or discounted goods and services, but that you do not provide any services to the buyer following the closing of the sales transaction.

In conjunction with your downpayment assistance program, you state that you are committed to promoting fair lending practices. In pursuit of this goal, you state that you will establish set policies and practices to protect mortgagees from unfair practices. You state your goal is to have participating lenders and brokers agree to enforce such standards by providing a certification process that lenders and brokers could attain through continuing education for state licensure. As part of the certification process, you state that you would monitor unfair practices by reviewing closing statements of transactions that you provide downpayment assistance for and by responding to complaints from consumers.

The financial data that you included on your Form 1023 shows that you anticipate receiving approximately \$3,600,000 in gross receipts from services during your first three years of operation. You anticipated making "gifts" of approximately \$ 3,180,000 during that same period of time. You indicate that you will seek financial support by soliciting charitable

contributions from the general public, receiving annual dues of \$50 or more from members, service fees from sellers, service fee for fair practice certification. You also state that you may seek corporate sponsorship.

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

LAW

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

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

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

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

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

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

Rev. Rul. 67-138, 1967-1 C.B. 129, holds that helping low income persons obtain adequate and affordable housing is "charitable" because it relieves the poor and distressed or underprivileged. The organization carried on several activities directed to assisting low-income families obtain improved housing, including (1) coordinating and supervising joint construction projects, (2) purchasing building sites for resale at cost, and (3) lending aid in obtaining home construction loans.

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

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

Situation 3 describes an organization formed to formulate plans for the renewal and rehabilitation of a particular area in a city as a residential community. The median income level in the area was lower than in other sections of the city and the housing in the area was generally old and badly deteriorated. The organization developed an overall plan for the rehabilitation of the area; it sponsored a renewal project; and involved residents in the area

renewal plan. The organization also purchased apartment buildings that it rehabilitated and rented at cost to low and moderate income families with a preference given to residents of the area. The revenue ruling holds that the organization is described in section 501(c)(3) of the Code because its purposes and activities combated community deterioration.

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

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

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.

Your down payment assistance program does not serve exclusively low-income persons. Instead, your program is open to anyone without any income limitations. 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. You indicated that you do not specifically target the benefits of your program towards any one disadvantaged group. 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. See Rev. Rul. 70-585, Situation 4. Your program is available to anyone who is able to qualify for a mortgage from any

lender in any State in the United States. 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.

Furthermore, you do not engage in any activity to ensure that the house will be habitable or that the buyer will be able to afford to maintain the house over time. Instead, you rely solely on the mortgage lender, insurance agency, home inspector or other third party to conduct such review. While you indicate that you provide an education program, you do not provide oversight or conduct any educational program or other activity to ensure that buyers are purchasing properties that are safe, decent, sanitary, and affordable.

Only an insubstantial portion of the activity of an exempt organization may further a nonexempt purpose. As the Supreme Court held in Better Business Bureau of Washington D.C., Inc. v. United States, *supra*, the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. You conduct your operations in a manner that is consistent with a commercial firm seeking to maximize sales of services, rather than in a manner that would be consistent with a charitable or educational organization seeking to serve a charitable class or the public at large. The manner in which you operate your down payment assistance program indicates that you facilitate the sales of homes in a manner that is indistinguishable from an ordinary trade or business. You operate as a business that provides services to home sellers for which you charge a market rate fee. For example, you limit your services to buyers where there is a seller willing to make a contribution to you. In addition, you indicate that by using your program, sellers will increase the number of potential homeowners. This 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., 283 F. Supp. 2d 58 (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. You are not supported by contributions from the general public, government or private foundation grants. Almost all of your revenue comes from the sellers you serve. That your primary activity is to promote and to further your private business interests is reflected in the financing structure of your down payment assistance program. In this respect you are similar to the organization described in Easter House, *supra*, which derived most of its support from fees it charged for its adoption services. In this case, the court stated that the substantial fees were not incidental to the organization's exempt purpose because they were designed to make a profit. Facilitating home sales, like running an adoption service, is not an inherently charitable activity, and receiving support primarily from fees charged to home sellers is indicative of your commercial purpose.

Even if your program is directed to exclusively low-income individuals, your reliance entirely on home sellers or other real-estate related businesses that stand to benefit from the transactions to finance your down payment assistance activities demonstrates that you are operated for the purpose of benefiting private parties.

Your grant making procedures indicate that gift funds are only provided if a seller has paid a processing fee or has made a contribution to you. In fact while you call the funds you will receive from the sellers "contributions", these transactions are not contributions because they will not "proceed from detached and disinterested generosity." Commissioner v. Duberstein, 363 U.S. 278, 285 (1960). Your characterization of these transactions as contributions ignores the business realities surrounding the payments. The sellers will make the payments to you and indirectly to the homebuyer to facilitate the sale of their homes. In fact your representation that seller's payment will enable the seller to reduce the amount of the negotiated discount demonstrates the circular character of the payments. Upon the closing of the sale, the sellers "contribution" to you is returned to seller as part of the proceeds the seller receives from the sale of the home.

These "contributions" are more appropriately characterized as fees received in exchange for the sale of a service. Your information indicates that your staff is able to take into account whether there is a home seller willing to make a payment to cover the down payment assistance an applicant has requested. That you receive a payment from the home seller corresponding to the amount of the down payment assistance in virtually every transaction indicates that the benefit to the home seller is not a mere accident but rather an intended outcome of your operations. In this respect, you are like Easter House, *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.

Finally, you assert that other organizations similarly situated have been recognized as exempt under section 501(c)(3). While you may have provided some facts relating to those other organizations, you have not provided all the facts relating to the applications for recognition of exempt status submitted by those organizations. In any event, you must establish based on the facts you submitted that you are organized and operated exclusively for exempt purposes described in section 501(c)(3). See Interneighborhood Housing Corporation v. Commissioner, T.C. Memo 1982-661.

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

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

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

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

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

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

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

Please send your protest statement, 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

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

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure

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