



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A =
B =
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M =
N =
P =
R =

Dear :

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.

You, M are a Florida Not-for-Profit Corporation formed February 7, 2003. Your Articles of Incorporation provide that you are organized to operate exclusively for charitable, civic, fraternal, educational and scientific purposes. In your letter of March 25, 2005, you submitted an amendment of your Articles of Incorporation to the State of Florida, modifying the above organizational language to comply with section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations.

Your application Form 1023 provides that you engage in two activities and that you will divide your time equally between each. You state that your first activity is a two-part housing program. One program is designed to help sellers of houses sell their homes by utilizing a down payment assistance program and the second is a program focusing on rehabilitation of

distressed properties. In your letter of February 25, 2005, you withdrew your rehabilitation program from consideration. Your other activity will be a tuition assistance program for students enrolled in private schools.

Your initial Board of Directors is composed of A, B, and C. A and B are husband and wife. C is not related to either A or B. A is the president and CEO of N, a section 501(c)(3) organization that conducts credit counseling services. In your application you state that you are an outgrowth of N. You state that a number of persons, whom N had assisted, requested that you provide the type of services for which you were formed. In your application and in subsequent correspondence, you state that you and N operate independently and that participation in N's program is not a requirement to participate in your down payment assistance or tuition assistance programs. In your letter of January 21, 2004, you state that officers and/or directors will not receive compensation for their services, except that A may receive compensation at the discretion of the Board and subject to the financial position of the organization.

Down Payment Assistance Program

Regarding your down payment assistance program, in your letter of June 30, 2003, you describe this program as "designed to assist those sellers who are in need of financial assistance due to the 'distressed' circumstances surrounding the disposal of the home or who may need to sell in a hurry." You further state that your program will allow sellers to dispose of property, but remain financially solvent. In your letter of February 25, 2005, you indicated that you had misstated this description, and that instead, you will be assisting low and moderate-income families wishing to purchase a home, but having limited resources in which to provide a down payment. In your letter of January 21, 2004, you state that you "develop 'Target Areas' that indicate those areas that are in the most immediate need of [your] financial services." In your letter of February 25, 2005, you state that you will promote your program through lenders, title companies, mortgage brokers, builders and organizations whose primary purpose is to assist individuals in securing affordable housing.

In your letters of June 30, 2003 and January 13, 2004, you describe in detail your Down Payment/Gift Program, which will provide down payment assistance in the form of gift funds to low and moderate-income families to be used toward the purchase of homes. You describe the program's operation as follows:

1. The potential applicants and/or lenders will contact you to initiate the down payment assistance process. The applicant must complete a "Gift Funds Request Form," which is reviewed by your Advisory Board to determine eligibility for gift assistance. In your letter of June 30, 2003, you state that your policy is to follow the FHA and lender guidelines on determining who is eligible for gift funds. You state that the limitations on your program will be dictated by the lenders and the FHA guidelines. In your letter of February 25, 2005, you state that you will not be utilizing an Advisory Board, but will instead use a Down Payment Assistance (DPA) specialist. The DPA Specialist will be your employee and will be trained and authorized to determine a buyer's eligibility within the program using the lending guidelines under FHA.

2. The lender will work with the applicant to find the right and suitable mortgage. The lender will then determine the amount of down payment that is needed and contact your DPA Specialist regarding the amount of down payment assistance requested. In your letter of February 25, 2005, you state that there is no minimum amount of down payment gift funds that you are willing to provide. You limit your maximum amount of down payment funds provided to 6% of the sales price of the home.
3. The applicant signs a "Gift Letter." The letter states that the funds were provided from a pre-existing pool and not from any person or entity with an interest in the sale of the property. The letter also provides that there is no repayment required of the funds and if the funds are not utilized within seven days of receipt by the closing office, the funds will be returned to you.
4. Once the applicant qualifies for a mortgage, you state that the DPA Specialist will refer the applicant to an approved realtor or builder. If the applicant already has a realtor or builder, you request that the applicant have the realtor or builder contact you. You will then have the DPA Specialist conduct training about your program and guidelines thereof for such lenders, realtors and builders, allowing them to become approved by you.
5. When the applicant has found a home, you state that the realtor or builder will assist the applicant in making a fair and reasonable offer on the property. At that time, the seller of the property is requested to complete a "Participating Home Agreement," wherein the seller commits to make a contribution to you equal to the down payment funds provided to the buyer, including a processing fee of \$595 provided that the buyer uses your down payment assistance program. In your letter of January 21, 2004, you state that you require a minimum of \$595 or a maximum of 6% based on the down payment amount as a processing fee for services provided. In your letter of February 25, 2005, you further clarified this and state that if the down payment amount is less than \$10,000, the processing fee to participate is \$595. If the down payment is greater than \$10,000, the seller is required to pay 6% of the down payment gift funds remitted as a processing fee. The agreement further provides that the gift to the applicant is from a pre-existing pool of funds and that the seller is requested to make a contribution back to you to "replenish" the funds in your program using the "Gift Funds Donation Form," which provides that seller is providing a tax-deductible contribution and that seller may receive a refund if the buyer is unable to close on the property. In your submission of February 25, 2005, you withdrew your donation form. Instead, you indicate the seller contribution on the revised Participating Home Agreement, which provides that the "seller agrees to assign a contribution to [you] in the amount of \$_____ (which is equal to the gift amount plus [your] processing fee. Seller understands that the contribution will not be used to provide down payment assistance to the Buyer of the Participating Home, and that the gift funds that are provided to the Buyer towards the purchase of Seller's home are used from a pre-existing pool of [your] funds. Seller also understands that he/she is only obligated to make the contribution if a homebuyer utilizing [your] program

purchases the Participating Home.” In your letter of February 25, 2005, you state that “it is common for the seller to make the donation at the closing of the sale.”

6. Once an offer on the property is accepted, the lender will have the property appraised. In your letter of February 25, 2005, you state that you will request a copy of the independent appraisal and compare it against comparably priced homes in the neighborhood. You state that the price of the home may not exceed the appraised value by more than 2%. You also indicate that you will utilize the FHA lending guidelines and if the home does not fall within those guidelines, you will notify the buyer that they are not eligible for down payment assistance.
7. Upon receipt of the final appraisal, the lender will approve the mortgage, secure the interest rate, and set a closing date. At that time, the lender will request the gift funds from you. The Lender Instructions and Checklist provides that the lender must “make sure seller signs” the Participating Home Agreement. It also notes that the “seller will contribute gift amount plus \$595 processing fee.”
8. Prior to closing, you will wire the gift funds to the closing or escrow company. The accompanying letter provides that the closing office is responsible for ensuring that the seller provides its contribution to you within three (3) business days from the date of closing. If the buyer is unable to close on the transaction, your Participating Home Agreement provides the following: “Seller understands that in the event Buyer is unsuccessful in obtaining a loan or the loan does not close within seven (7) days after the gift funds are deposited into escrow, the funds will be returned to [you] from the respective escrow account.”
9. After closing, you will offer applicants a financial literacy program, which consists of a 12-lesson self study text. In your letter of February 25, 2005 you state that the DPA Specialist and other staff members will oversee and monitor an applicant’s progress through the course. In addition, you state that you will provide continual education to buyers after closing, but did not provide any detail as to what the continuing education will encompass.

In your letters of January 21, 2004 and February 25, 2005, you state that you will provide down payment assistance to a buyer, if the seller of the property pays only the minimum processing fee and does not provide any additional contribution that matches the gifted assistance.

In your letter of January 21, 2004, you state that you do not limit your services based on income or assets of the buyer. Instead, you state that your criterion mirrors that of the lending institution. You state that down payment assistance funds can only be applied to bank approved transactions and that a lender bank would not approve of the inclusion of down payment assistance gift funds if the buyer has his or her own funds available.

Tuition Assistance Program

Your other activity is a tuition assistance program which will provide financial assistance from a pre-existing pool of funds, to students who qualify for private education, but do not have adequate funds to enroll. The program is open to individuals regardless of race, sex, age, sexual orientation, religion, or employment status. Your Student/Applicant Membership form provides that for a non-refundable payment of \$25.00, a tuition assistance applicant can enroll in your financial literacy program and be considered for tuition assistance. In order to be considered for assistance, an applicant must attend and complete your financial literacy program.

In your letter of June 30, 2003, you state that you will provide ongoing telephone counseling and provide for a nominal charge of \$39.00 for account set-up (\$25.50 of which is paid to you) and a monthly fee of 6.95% of any monthly account fee billed over \$2.00 (3.71% of which is paid to you), a monthly stipend/allowance service, in the form of a pre-paid credit card, to parents of students.

In your letter of June 30, 2003, you also state that the selection of the recipient for the tuition assistance program will be based on the following:

1. The student must qualify for enrollment in the selected private school;
2. The student must demonstrate financial need;
3. The student must agree to manage their finances throughout their education within the standards set by you and within parental guidelines;
4. The student must maintain a scholastic grade level that permits the continuation of the education process at the private school;
5. The student cannot be convicted of a felony during the term of the private school program; and
6. The student must pass a drug and alcohol screening test in order to qualify for participation in your program.

In your letter of February 25, 2005, you provided the following modification to your criteria for applicants for tuition assistance:

1. A U.S. citizen or an eligible non-citizen;
2. Full-time study at an approved accredited educational institution;
3. Matriculate in an approved program of study and be in good academic standing;
4. Have at least a cumulative "C" average after receipt of two annual payments; and
5. Not be in default on any student loans.

You state that the selection committee will be appointed annually by your Board of Directors. Members of the committee and their immediate family may not be current beneficiaries of the program. However, individuals who had previously benefited from the program may sit on the committee. The committee is made up of at least three persons and will

not be paid for their participation. The selection committee will also be responsible for determining the content of the application form and filing deadlines.

You state that the Board of Directors will set the number of distributions each year. Financial assistance for up to one year's tuition may be used for all levels of education from pre-kindergarten through graduate school, including trade schools, private schools and charter schools. You state that the recipient will not be limited in the number of years that a request for assistance is made and that funds will be paid directly to the educational institution.

Your Private School Tuition Program Donor Contribution Agreement provides for a processing fee of 3.75% (minimum of \$599.00) from all contributions made to cover your operating costs. When asked why a donor would provide an indirect contribution to a school through you rather than making a full contribution to the school, you state that any assistance provided by you through the tuition assistance program will be forwarded directly to the school to prevent any earmarking of funds and to prevent any undue influence by a private school in its acceptance policies.

Financial Management Program

In conjunction with the down payment assistance and tuition assistance programs, you state that you will offer a financial literacy program (also known as the financial management program). In your letter of June 30, 2003, you state that the financial management programs "will not be provided directly by [you] but [you] will work with other entities to assist those participating in [your] program." In your letter of January 21, 2004, you state that your "employees will perform all programs and financial services of this company."

You state that you require all participants to complete the program prior to the release of any funds and that continual education is offered. You state that the program is offered free of charge to applicants. The course consists of a 12-lesson self study text, which you state is designed to help individuals gain a better knowledge of money issues and responsibilities. Upon completion, students are registered with a national database and sent a registration card indicating that they have graduated from a national standardized credit education program. Completion of the program also provides students with three cards addressed to three major credit bureaus allowing them to add a positive statement to their credit report. In your letter of February 25, 2005, you state that the DPA Specialist and a Tuition Specialist will be responsible for monitoring individual progress through the education course and will be certified by a nationally recognized certification organization. Applicants who are in the local area may come into your office for assistance, while applicants not in the local area are provided with telephone consultations. In addition, you state that participants will receive specialized programs depending on whether they are participating in the down payment assistance program or the tuition assistance program.

In connection with your financial management program, you represent that you have an agreement or arrangement with R. You indicate that R is a provider of debit cards. Documents in the administrative file indicate that R would pay P, 75 percent of any application-processing fee collected over \$5 and 75 percent of any monthly account fee billed over \$2. Your founder

has 50 percent ownership interest in P. You did not state whether or not any person related to your founder has an ownership interest in this entity.

Other Information

Your application provides that you are a membership organization. Your application indicates that students may qualify for membership by qualifying for private education, enrolling in your financial program and paying a one-time fee. Home sellers qualify for membership by gifting the property to your program and accepting the buyer as the purchaser. The processing fee paid by home sellers at the time the house is sold is their membership fee. Your bylaws discuss some voting privileges of the members, but do not provide membership qualification.

Also, you did not provide any information as to what benefits, if any, membership provides to students or home sellers. In addition, financial projections show membership fees to be a small percentage of your overall income.

Your current operating budget shows that your primary source of funding will be down payment assistance contributions and processing fees from sellers. In your letter of June 30, 2003, you state that the source of down payment assistance "will almost always be the seller" and that the "seller will agree to make a donation to [you] that equals the amount of the gifted down payment assistance." In contrast, in your letter of January 21, 2004, you state that your pool of gift funds is from private contributions. In your letter of February 25, 2005, you state that the "source of gift funds may be from the seller or any other independent source of contributions." However, you do not have any fundraising program to solicit contributions from persons other than those participating in your housing program.

In your letter of February 25, 2005, you state that you do not currently have any employees, but upon granting of exemption, you will engage employees who will act as "down payment assistance coordinators." The job description you provided indicates that the down payment assistance coordinator will be responsible for developing and promoting "a premier nationwide, full service Down Payment Assistance Program (DPA); to provide an origination tool for loan officers/lenders in order to promote homeownership across America." In addition, your employees will be advocates for N, promoting that organization's credit counseling programs.

Law and Rationale

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 a community of craftsmen. It did not market the kinds of products produced by studio craftsmen, nor did it market the handicrafts of artisans who were not disadvantaged. 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.

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.

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, Sit. 1.

In contrast, your down payment assistance program does not serve exclusively low-income persons. Instead, your program is open to anyone without any income limitations. Furthermore, you do not engage in any review of the financial health of applicants or properties. Such activity would ensure that the house will be habitable and that the grantee will be able to afford to maintain the house over time. See 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. 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. 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.

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 providing services to home sellers for which you charge a market rate fee. 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. You are not supported by contributions from the general public, government or private foundation grants with only an incidental part of your revenue from sellers' fees and contributions. 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. A review of your financial documents shows that your primary source of support is from sellers' fees and contributions. 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 financing structure and grant making procedures show that you must rely entirely on home sellers or other

real-estate related businesses that stand to benefit from the transactions to finance your down payment assistance activities. Unlike Aid to Artisans, *supra*, your grant making procedures demonstrate 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. You have characterized these fees as “voluntary contributions.” However, we have determined that these are in fact fees received in exchange for the sale of a program-related service. Your information indicates that your grant making 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.

You state that most of the amounts you will receive from home sellers are contributions. Characterizing these payments as contributions ignores the business context of the payments and the realities of the transactions. The home sellers will pay these amounts to facilitate the sales of their homes. These payments are not contributions which are deductible under section 170 of the Code. Nevertheless, the documents you provided state or lead home sellers to believe that these payments are deductible as charitable contributions and may contribute to tax avoidance. Therefore, a substantial part of your activities furthers the nonexempt purpose of encouraging the avoidance of federal income tax and serves a private purpose. See, e.g. The Ecclesiastical Order of The ISM of AM, Inc. v. Commissioner, 80 T.C. 833 (1983).

In addition to the private purposes served by your down payment assistance program, the arrangement you have with P and R also shows that you serve the private interests of your founder.

Like American Campaign Academy, *supra*, which provided education opportunities and Easter House, *supra*, which provided health-related services, you may serve an exempt purpose through your tuition assistance and financial literacy programs; however because you are not operated exclusively for exempt purposes, 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 protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This

statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section 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 administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

In the event this ruling becomes final, it will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you decide to protest this ruling, your protest statement should be sent to the address shown below. If you fax your reply using the fax number shown in the heading of this letter, please contact our office on (202) 283-8919 or (202) 283-8926 by telephone to confirm that your fax was received.

Internal Revenue Service
TE/GE, SE:T:EO:RA:T:2
1111 Constitution Ave, N.W., PE-3G3
Washington, D.C. 20224

If you do not intend to protest this ruling, and if you agree with our proposed deletions as shown in the letter attached to Notice 437, you do not need to take any further action.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure: Notice 437