



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200610021**

Released Date: 3/10/06

SE:T:EO:RA:T:PE

Date: December 14, 2005

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Uniform Issue List:

501.00-00

509.00-00

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,

Joseph Chasin

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: October 14, 2005

Contact Person:

Identification Number:

Uniform Issue List:

501.00-00

509.00-00

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M =
N =
P =
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.

FACTS

You, M are a State non-profit corporation, formed on Date. Your Articles of Incorporation state that your specific purpose is to conduct or support "activities for the benefit of, to perform the functions of, or to carry out the purposes of N."

Your application, Form 1023, and your website indicate that you were formed as a supporting organization for N. You are engaged in assisting low and moderate-income homebuyers to purchase homes by providing down payments. You state that excess revenues will be contributed to N for its programs.

You state that you will make gifts of down payments of up to 5% of the purchase price to qualifying people who purchase a home from a builder/seller who is enrolled in your program

and are financed with a HUD guaranteed loan (FHA or conventional). You further state that builders and sellers who participate in your program pay a service fee to you. You state that the service fee pays for operating costs, replenishes the gift funds and provides cash for N.

In your letter dated May 1, 2003 and supplemented by your letter of September 29, 2003, you provide the following information regarding program operations:

1. Buyer and seller enter into a purchase agreement for a home. The mortgage originator, real estate agent or builder informs buyer and/or seller of you program. The recipients of gifts are private individuals in the low to middle income range needing financial assistance with a down payment in order to be able to purchase a residence. You state that you do not limit your gifts to a particular income or asset class. Recipients will request gifts by filing an application with you. The gift request form indicates that funds may be requested for up to 10% of the contract price.
2. The lender registers with you and informs you of the date of scheduled closing. The lender will also indicate the amount of gift that is requested.
3. Sellers are required to sign a Participating Home Agreement. The agreement requires the seller to make a nonrefundable contribution to you an amount equal to the gift given to the buyer. The Agreement indicates that the "contribution" is to be paid at closing. In addition to the contribution, a separate service fee is charged by you. The service fee is \$ or \$ with homeownership education for an FHA loan, and % of the contracted sales price, with a minimum of \$ for a conventional loan.
4. A few days before closing, you will transfer the gift to the closing attorney, escrow agent or title company. The closing is consummated by the buyer utilizing the gift funds for down payment. If the closing does not occur, the seller is not required to make a contribution to you.
5. Subsequent to closing, the seller or other party, including the lender, realtor or buyer pays the processing fee to you. The processing fee covers your cost of administering the program including marketing of the program. In addition, the seller makes the contribution to you in an amount equal to the gift provided.

In your application, you represent that you operate in a manner similar to a specified organization. The manner in which you and this 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 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.

In your letter of September 29, 2003, you state that you do not participate in the purchase or closing of the sale of the home other than to provide the gift to the buyer. You also do not provide any other services to any of the participants in the transaction. You specifically state

that you do not offer any homeowner educational programs.

In your application, you state that your primary source of final support is investment income and service fees from sellers and builders. You do not engage in any fundraising activities.

You have entered into a ten-year marketing and servicing agreement with P, wherein P will provide the following services:

1. Provide all marketing, including support for sales staff;
2. Provide all human resources needed by you;
3. Develop and maintain your website;
4. Provide all accounting and payroll services;
5. Coordinate and handle the transfer of funds in closings;
6. Service, process and handle the approval of all downpayment assistance gifts under your program;
7. Comply with all government requirements;
8. Pay all costs incurred in the operation of the program

The agreement further provides that you will collect all fee income from transactions at the rate of \$ per FHA loan and % of the loan amount for conventional loans. You will pay sales commissions not to exceed % of the gross fee income. You will pay P % of the gross fee revenue. You also provide that you will charge additional fees for last minute services and pay P for any additional costs.

Your sales representatives market your program to mortgage originators, real estate agents, and builders. You state that you use cable TV ads, consumer brochures, a marketing material order form, mini application, radio ads, radio talk shows, a six-week strategic marketing campaign, zero dollar bill coupons, homebuyer flyers, homebuyer postcards and print ads to make your program known to the public.

In your letter of May 1, 2003, you state that your Board of Directors voted to enter into a service agreement with P after numerous discussions and negotiations. You state that P initially approached N regarding the use of a downpayment assistance program as a means to raise funds for N. You state that the Board of Directors of N was reluctant to enter into such a venture due to liability concerns. Thereafter, you were incorporated to engage in this activity.

You requested status as an organization described in section 509(a)(3). You indicate that you were formed to support N. N's website indicates that its mission is to "inspire and enable all young people, especially those from disadvantaged circumstances, to realize their full potential as productive, responsible and caring citizens."

Based on your unaudited financial statements, you do not provide financial support to N.

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."

In Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916, 926 (1986), the court stated that while the payment of reasonable salaries does not constitute prohibited inurement, the payment of excessive salaries does.

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.

Section **509(a)(3)** of the Code provides, in part, that the term "private foundation" does not include an organization which is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified exempt organizations described in sections 509(a)(1) and 509(a)(2) of the Code; and is operated, **supervised**, or controlled by or in connection with one or more organizations

described in sections 509(a)(1) and 509(a)(2).

Section 1.509(a)-4(e)(1) of the regulations describes permissible beneficiaries as that term is used in 509(a)(3) of the Code. That section provides that a supporting organization will be regarded as "operated exclusively" to support one or more specified publicly supported organizations only if it engages solely in activities which support or benefit the specified publicly supported organizations. Such activities may include making payments to or for the use of, or providing services or facilities for, individual members of the charitable class benefited by the specified publicly supported organization.

Section 1.509(a)-4(e)(2) describes permissible activities as that term is used at section 509(a)(3) of the Code. A supporting organization is not required to pay over its income to the publicly supported organizations in order to meet the operational test. It may satisfy the test by using its income to carry on an independent activity or program which supports or benefits the specified publicly supported organizations. All such support must, however, be limited to permissible beneficiaries in accordance with subparagraph (1) of this paragraph.

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 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 through a lender registered with you. Arranging the purchase of homes nationwide 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 suggest, but do not require, completion of an education program, this program is offered through a website. 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, your sample transaction explains how the seller and agent will benefit from your program as sellers are able to sell their homes at the full list price. This type of approach, as well as your representation that buyers may receive up to a 10% gift amount, was determined to maximize the number of potential homeowners, helps to demonstrate that your primary purpose consists of maximizing the fees you derive from facilitating sales of real property. The promotional materials you provided indicate that you aggressively market your Gift Program. 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 and has agreed to make a contribution to you. The seller's contribution must equal the amount of the down payment assistance provided to the buyer. 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 seller’s “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. 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.

With respect to your request for classification as an organization described in section 509(a)(3) of the Code, you do not meet the requirements for classification under that section.

N was formed to benefit all young people, especially those from disadvantaged circumstances. You were formed to benefit home sellers and homebuyers rather than young people. Based on your unaudited financial statements, you have not distributed funds to N. You do not use your income to carry on an independent activity or program which supports or benefits N. Carrying on a down payment assistance program does not further the exempt purposes of N. Further, you do not limit your benefits to permissible beneficiaries.

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. 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. We will carefully consider your statement and decide how that information affects our determination.

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, D.C. 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

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