

200625036



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date: 3-21-06

SE:TEO

Name of Organization  
Street  
City, State Zip

U/L: 501.38-00  
501.33-00

Contact Person:  
XXXXXXXX  
Identification Number:  
XX-XXXX  
Contact Number:  
XXX-XXX-XXXX  
Employer Identification Number:  
XX-XXXXXXXX  
Form Required To Be Filed:  
Form XXXX  
Tax Years: XXXX, XXXX, XXXX

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.

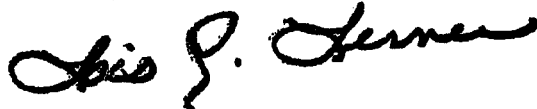
In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State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

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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,

A handwritten signature in black ink, appearing to read "Lois G. Lerner". The signature is written in a cursive style with a large initial "L".

Lois G. Lerner  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter

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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date:

M  
Street  
City, State Zip

Contact Person:

Identification Number:  
XX-XXXXX  
Contact Number:  
XXX-XXX-XXXX  
FAX Number:  
XXX-XXX-XXXX  
Employer Identification Number:  
XX-XXXXXXX

Legend:

UIL Nos: 501.36-00  
501.33-00

M = Name of Organization  
State = Residing State  
Date = Incorporation Date  
N = Name of Organization

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.

**Facts:**

You, M are a State non-profit corporation, formed on Date. Your Articles of Incorporation state that the purposes for which the corporation is organized are exclusively for the benefit of, to perform the functions of, and to carry out the purpose of N. Your Form 1023 states that N is a 501(c)(3) organization.

Your application Form 1023 and your letter postmarked on March 2, 2004 provide that you will engage in down payment assistance. You will provide gift funds ranging from 1% to 6% of the purchase price of a home for all home buyers requesting down payment and/or closing cost assistance in connection with the purchase of a home. The seller will make a contribution to you "in amounts approximating the amounts of the down payment gifts". You will also collect a \$300 "contribution" from the seller of the home purchased with down payment assistance funds.

You do not limit your down payment assistance program to low income families. In your letter of March 2<sup>nd</sup>, you specifically state that there are no income limits. Your letter also states that home buyers must qualify for an FHA loan, as this is the only loan program you will allow. However, the "Guidelines for M Down Payment Assistance Program" state that you impose three requirements to qualify for your down payment assistance program. A home buyer must purchase a home to

be owner-occupied from a seller who participated in your down payment assistance program; they must use an eligible loan program, such as an FHA loan, that is approved by you; and they must sign the "Gift Letter M Program" at or before closing. The Guidelines state that the loan program used by the home buyer must allow charitable organizations to provide down payment assistance; and does not limit the buyer to an FHA loan.

You represent that you transfer funds at settlement using a pre-existing pool of funds to provide buyers with required down payment amount towards the purchase of a seller's home. You state that your income and gift funds for homebuyers are "funded" exclusively by sellers' gift contributions and fees, which are contingent upon the sale of a home through your program. You state that a typical down payment assistance transaction includes the following steps:

1. You advertise your program to homebuilders and lenders primarily, who are already using other seller assisted down payment assistance program to attract home buyers and home sellers.
2. Lenders and homebuilders complete online registration with you by completing company information and you approve it.
3. A lender or a homebuilder requests your gift funds by online.
4. After you approve the gift fund request, the lender or the homebuilder is provided three print outs: Gift Funds Request" (to be signed by the lender), Participation Service Fee Agreement" (to be signed by the seller), "Gift Letter (to be signed by the home buyer).
5. The buyer, the seller, and the lender complete above required forms accordingly before closing.
6. You wire the gift funds to the closing agent right before closing.
7. At the closing, the closing agent credits your gift fund amount in HUD 1 statement for home buyer and collects the gift contribution and \$300 flat contribution from the seller.
8. After closing, the closing agent wires the gift contribution and \$300 flat contribution to you.

In your letter of March 2, and its attachment, "Gift Letter," you state that a typical down payment assistance amount to a home buyer will be 3% of the final sales price, which is the minimum down payment percentage required by FHA mortgage insurance. You do not provide down payment assistance to buyers in situations where seller's contribution is less than the down payment. You also state that if the seller's gift contribution is greater than the actual down payment assistance, the difference will be used for your other charitable activities.

Your "Gift Letter" provides the following information: the gift money will be used for the purchase of the home and will be paid directly to the closing agent at closing; the gift fund is subject to availability and your discretion; the gift is not from the seller or any other person, but from you; and there is no obligation of repayment for the gift.

The "Down Payment Assistance Program Participation Agreement" states that all participants in the program are requested to make a contribution to you in an amount not less than the amount of the gift made to the home buyer plus \$300. By signing the Agreement, the seller agrees to make contributions to you only after the closing has occurred; and allow the closing agent to deduct the contribution from the proceeds of the sale. The Agreement also states that the gift funds will be returned if the buyer is unable to obtain a loan or if the closing is delayed.

You state that you recognize that the "contributions" from the home sellers may not be "charitable contributions because payments made may not necessary come from the 'detached and disinterested generosity' of the seller. [You] believe payments made to [you] may not flow from a 'generous act', but rather from an anticipated benefit to the seller (i.e., the sale of real property)."

In your letter of March 2<sup>nd</sup>, you represent that the seller's price of the home will not be an inflated price because you recommend the appraiser to adjust the price of the home downward for the difference between normal discount of the home in market place and the seller's contribution in your program.

Your "Gift Requests" provides a buyer's, a seller's, a lender's, and closing company's information, contract sales price, the amount of fund requested by a buyer, closing date, and settlement date. It also provides information on closing company and the home purchased. It states that the lender and closing agent must comply with all of your program guidelines.

The "Guidelines for the M Down Payment Assistance Program" ("Guidelines") show that your primary objective is to facilitate the sale of homes. To facilitate the sales of homes, you impose various requirements on home buyers, home sellers, mortgage lenders and closing agents. For example, you state that the program is initiated by the mortgage lender who submits the information about the transaction and generates the necessary forms. You do not require completed copies of the forms; which are retained by the mortgage lender. The mortgage lender ensures that the wiring instructions for the gift funds are correct and cancels the gift request if the closing does not occur. The closing agent receives the gift funds at closing; and wires the \$300 "contribution" to you.

In your letter of March 2<sup>nd</sup>, you state that you merely rely on FHA requirements to ensure that buyers acquire and keep safe, decent, sanitary, and affordable homes and avoid default since you only provide gift funds for FHA guaranteed mortgages. However, as mentioned above, other documents submitted with your application show that you do not limit your program to buyers who obtain an FHA loan. The Guidelines state that you encourage homeowners to take your homeownership education course on how to be a homeowner. This course can be found on your website and is also available in paper form. Your response included a paper copy of this guide, a four-page summary of general aspects of home ownership. Other than this course, you do not offer any educational programs or materials.

The financial data that you included in your letter of March 2, 2004 shows that you anticipate receiving approximately \_\_\_\_\_ in contributions for the first year and \$ \_\_\_\_\_ in contributions for the second year from your down payment assistance program which is your only source of income. You anticipate making "gifts" of approximately \_\_\_\_\_ for the first year and \_\_\_\_\_ for the second year. You state that your sole source of support is contributions received from your down payment assistance program.

The manner in which you 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 down payment assistance for mortgage down payments 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 down payment 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(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, 848 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, educational, 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. 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. 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 state that the fees and "contributions" received from the home seller are contingent on the sale of the seller's home through your program. In addition, you do not provide assistance if the seller has not contributed or contributes less than the down payment provided to the buyer. This approach demonstrates your primary purpose consists of maximizing the fee 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 Airie 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 service fee or 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." Not only have you admitted this fact in your response, you also state that you believe that the payments made to you are the result of an anticipated benefit to the seller. 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. 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 clearly indicates that you 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 plus the service fee indicates that the benefit to the home seller is not a mere accident but rather an intended outcome of your operations. In this respect, you are like Easter House, *supra*, which provided health care to indigent pregnant women, but only when a family willing to adopt a woman's child sponsored the care financially. Similar to American Campaign Academy, *supra*, you are structured and operated to directly benefit the home sellers who pay for your services. Therefore, a substantial part of your activities serve a private rather than a public interest.

Based on the facts and information submitted, you are not operated exclusively for exempt purposes. You have not established that your 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. 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. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

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

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

**200625036**

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Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

US Mail:  
Internal Revenue Service  
Exempt Organizations

Street Address:  
Internal Revenue Service  
Exempt Organizations

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

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

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure(s)  
Publication 892  
*An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations*  
HUD Contract No: C-OPC-22550/M0001 (March 1, 2005)