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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: JUN 16 2008

Number: 200837050
Release Date: 9/12/2008

UIL: 501.36-01
501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120
Tax Years:

Dear :

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

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

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

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

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

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

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: April 25, 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL: 501.36-01
501.33-00

Legend:

B	=
C	=
M	=
O	=
P	=
Q	=
R	=
State	=
County	=
Date	=

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Facts:

You, M, are a State Nonprofit Corporation formed on Date. Your initial Articles of Incorporation state that you are formed to help economically distressed County residents obtain and/or maintain housing and re-establish their financial health. Restated Articles of Incorporation were later filed with State in order to meet the organizational test under section 501(c)(3) of the Code.

Your Form 1023 Application provides you will be an organization dedicated to saving County, State families from the trauma of losing their homes. You state you will accomplish this purpose by taking over financial responsibility for the property and renting it back to the family at an affordable rate. You further state you will work with the family to re-establish good financial health and credit, thereby enabling them to re-acquire the home back.

Your business plan included a market analysis of your potential clients. The following market segments were selected as the four most desirable: low value homes, middle value homes, middle income families, and middle age families.

Your business plan states you will provide the following services: budgeting and debt reduction sessions and monthly or bimonthly seminars. Prices for budgeting and debt reduction sessions will be discounted depending on clients' income and amount of disposable income. There is a $10 fee per couple charged for your monthly or bimonthly seminars. This fee is not discounted. Your foreclosure assistance program is priced from $10,000 to 50% of sale profit realized on the property at close out.

M's planned operations are in three major areas: new client recruitment, investor recruitment, and active property management.

Outlines of the process used by the organization in recruiting new clients state potential clients need to be willing to learn from the past and have to be able to afford the home they are living in. A home inspection is done by a representative of M. If the home is beyond repair or if the family will not be able to afford the home even if a short sale is done then M will not try to save it from foreclosure. If the clients and home meet the criteria set by M an attempt will be made to acquire the home through a short sale, for example if a home originally had a mortgage for $120,000 would be purchased for $70,000. After the completion of your program the intent would be to sell the home back to the original owner for $80,000 plus closing costs.

If M is unsuccessful in acquiring the home through a short sale or if the potential client and/or home do not meet the criteria outlined above then M may provide the following services: budget classes, housing assistance, and sales assistance. Housing assistance will include the provision of a list of renters that are friendly to foreclosed families and nonprofit agencies that provide short term help to displaced families. Sales assistance is free advice provided to the family. M will provide information so that a home could be sold on the open market through a short sale.

Once M acquires a home it will be rented back to the client. The business plans states the monthly rent of a lower value property, with a value range of $35,000 - $100,000, will be $850. The monthly rent for a mid value property, with a value range of $100,000 - $150,000, will be $1,200. You state M plans to keep the rent payment in the same range as the client's potential mortgage payment upon repurchase of the home. Clients will be given between twelve to fifteen months to clean up their credit and acquire financing to repurchase the home. As stated above you expect individuals to repurchase the homes at a minimum of $10,000 above the price you initially purchased the home for through the short sale.

If a client becomes unresponsive to your program and stops making rental payments the organization will evict the client from the home. According to the organization's business plan in the first year of operations you anticipate closing on 12 properties of these 12 properties eventually 3 will be closed out as evictions. Any empty properties held by the organization will first be used by other families facing foreclosure. After that the home will be offered for sale by normal means, land contract, or lease to own. Any profits from those homes will be used to help other families facing foreclosure. You go on to state that a family being evicted is not truly evicted but surrenders the house due to a turn of events in their life. You go on to state you would like to give them some of the proceeds of the sale of the home to help them relocate. The return of proceeds from the sale of the home was not indicated in the financials provided.

Your initial sources of financial support are funds from O and P to cover operating expenses. The business plan includes additional sources of capital: philanthropists, charitable foundations, churches, and private businesses. These sources of capital are referred to as investors. Other sources of funds include fees for services which include the organization's educational programs, rents, and any additional funds received through the sale of homes either back to the original owner or on the open market.

In looking at the sales forecast provided for gross sales in the initial year of operations the revenue received from sales breaks down into the following percentages: 0.9% from seminars, 9.9% from counciling [sic], 59.7% from rent, 33.1% from evection close outs. M accounts for 3.6% in lost rents. The sales forecast for gross sales in the fifth year of operations breaks down into the following percentages: .11% from seminars, 2.5% from counciling [sic], 47.9% from rent, 5.8% from eviction close outs, and 44.4% from final sales where the property is successfully sold back to the client. .62% is accounted for as lost rents. Although the amount of funds from eviction close out has significantly decreased by the fifth year in looking at the entire 5 year period provided in the business plan M plans to acquire 52 properties of which eventually 25 will result in evictions, or 48% of total sign-ups.

M will attract investors through direct mail campaigns, radio ads, and newspaper. The business plan stated that investors have the option of receiving monthly payments at an annual interest rate of 8% (Monthly Contracts) or a lump sum repayment of principal and interest (at 10%) at the end of the contract (Term Contracts). Additionally, early repayment with an early withdrawal option was outlined for each contract type. Both of those options included a 5% early withdrawal penalty. In the first year of operations 40.1% of the organization's total cash available is going towards interest paid to investors. By the fifth year this amount has decreased to 33.8%, but M is now maintaining operating cash of 50.7% of total sales as opposed to operating at a loss of 17.3% in the first year.

Copies of the directors' resumes were requested. It was noted that B has an interest in for-profit organizations with similar activities. The resume states B is the owner of Q and is responsible for marketing sales, bookkeeping for the credit repair company. It was noted in that Q is in the process of being shut down due to the change in the mortgage industry. Additionally B was general manager/sales for R which helped families save their homes from foreclosure and he was responsible for managing daily business operations. R had the same concept as M however R was not able to find funding to purchase any homes and went out of business.

Applicable Law:

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

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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 B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352, 358 (1978), the court found that the organization did not satisfy the operational test under section 501(c) (3) of the Code because it was primarily engaged in an activity which was characteristic of a trade or business.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974), provides that an organization seeking a determination letter or ruling as to the recognition of its tax-exempt status has the burden of proving that it satisfies all of the requirements of the particular tax-exemption category.

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

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

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

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

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

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

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

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

Rev. Rul. 2006-27, 2006-21 I.R.B. 915, Situation 1, finds that an organization that, as a substantial part of its activities, (i) makes assistance available exclusively to low-income individuals and families to provide part or all of the funds they need to make a down payment on the purchase of a home, (ii) offers financial counseling seminars and conducts other educational activities to help prepare potential low-income homebuyers for the responsibility of homeownership, (iii) ensures that the dwelling is inhabitable, (iv) structures its grant making process to ensure that its staff awarding the grants does not know the identity of the party selling the home or the identities of any other parties, (v) rejects any contributions that are contingent on the sale of a particular property or properties, and (vi) conducts a broad based fundraising program that attracts gifts, grants, and contributions from several foundations, businesses, and the general public qualifies for exemption from federal income tax under section 501(c)(3) of the Code.

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

Rationale and Conclusion:

Based on the information provided in your 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 for 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. Also, an organization cannot allow its net earnings to inure to the benefit of private individuals and the organization cannot be organized to benefit private interests. See sections 1.501(c)(3)-1(c)(2) and 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Your information indicates that your primary purpose is to provide a viable alternative for foreclosure that does not exclusively serve a purpose described in section 501(c)(3).

You have not demonstrated your foreclosure program serves a charitable purpose. Charitable purposes include relief of the poor and distressed. See section 1.501(c)(3)-1(d)(2) of the regulations. Your services are not motivated solely for relief of the poor and distressed. Clients are selected based on investment potential not on need. This is demonstrated by the fact that M has identified the most desirable market segments and requires potential clients to submit to a home inspection. Those homes that are beyond repair or unaffordable to the client will not saved by the organization. Therefore, you do not conduct your foreclosure assistance program in a manner that establishes that your primary purpose is to address the needs of low-income clients by enabling low-income individuals and families to obtain decent, safe housing. See Rev. Rul. 70-585, Situation 1.

Additionally you are unlike the organization described in Rev. Rul. 70-585, Section 1, in that you require clients to submit rent payments to M in an amount that will satisfy the interest requirements of the investors who were brought in to initially purchase the properties. The primary source of M's revenues will be rent from clients, followed by the funds received from close outs, or successful completion of the program, and funds received from evictions. Other then investor recruitment through personal solicitation M has not established a broad based fundraising program as outlined in Rev. Rul. 2006-21.

You have not demonstrated that your foreclosure 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 maintain 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. The fact that the organization excludes those homes that are beyond repair and specifically targets those that provide best investment potential further demonstrates M is not attempting to combat community deterioration. Additionally, 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.

You rely on an employee of the organization's evaluation and primarily consider those applications for assistance for homes that meet your particular standards for habitability. While you indicate that you require completion of an education program individuals may evicted from their homes if they become unresponsive to the program. This distinguishes your situation from that described in Rev. Rul. 67-138. In looking at the entire 5 year period provided in the business plan 48% of the properties acquired will be closed out as evictions.

From the numbers provided it appears that the your intended education program is ineffective and that M is not meeting its stated purpose to help economically distressed County residents obtain and/or maintain housing and re-establish their financial health, but rather M is operating in a commercial manner.

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 foreclosure assistance program indicates that you facilitate the sales and rental of homes in a manner that is indistinguishable from an ordinary trade or business. You operate as a business that provides investment opportunities for which you provide a competitive return on investment. For example, your literature indicates your investors will have an opportunity to keep their funds in the local community, make a good return on investment, and minimize risk by using M's program to spread the risk and to receive professional real estate and financial management services as a direct benefit of this program. This type of approach helps to demonstrate that your primary purpose consists of maximizing the fees you derive from facilitating sales and rentals of real property. In this respect you are similar to an organization which was denied exemption because it operated a conference center for a commercial purpose. See Airlie Foundation, Inc. v. U.S., 283 F. Supp. 2d 58 (D.D.C., 2003). Likewise, operating a trade or business of facilitating home sales and rentals 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 rent or the close out of properties through the successful completion of your program or eviction. In the first year of operations 59.7% of the organizations sales will come from rent and 33.1% of your total sales will come exclusively from property evictions. By the fifth year of operations 47.9% of sales will come from rent and 50.2% of sales will come from property close outs. That your primary activity is to promote and to further your private business interests is reflected in the financing structure of your foreclosure 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. Furthermore, the desire to make a profit can be seen in the rents charged by the M. It was stated that M plans to keep the rent payment in the same range as the client's potential mortgage payment upon repurchase of the home. In running a simple loan payment calculation for the higher value, $100,000, in the organization's lower value property range a payment of $850 would assume 9.5% and for the mid value property range, $150,000, would assume approximately 9% interest for a payment of $1,200 per month. Both of these interest rates seem excessive when compared to the current interest rate and assuming the clients would eventually qualify for FHA loans as stated in your response. However, these interest rates are in line with the promised rate of return for M's investors of 9%.

Facilitating home sales and rentals, 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. Additionally, that B was general manager/sales for R, a for-profit, which helped families save their homes from foreclosure. That R had the same concept as M however R was not able to find funding to purchase any homes and went out of business, further demonstrates the commercial nature of M.

You are not similar to the organization described in Aid to Artisans, Inc. v. Commissioner, supra, in which the court concluded that the overall purpose of the organization's activities was to benefit disadvantaged communities. In addition, you have not shown that the individuals that you are serving constitute a charitable class.

Even if your program were changed to be directed to exclusively low-income individuals, your reliance on investors that stand to benefit from the transactions to finance your foreclosure assistance activities demonstrates that you are operated for the purpose of benefiting private parties.

Your home purchase procedures indicate that foreclosure is only prevented if a private investor has been located and made a contribution to you. It is inferred by the business plan that the funds you will receive from the investors are considered "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 investors will make the payments to you and indirectly to the family to prevent the foreclosure of their home. In effect, these payments have a circular character to them. Upon the rental and eventual sale of the property, the investor's "contribution" to you is returned to the investor as part of the income realized when the organization sells or rents the home.

Furthermore, you are similar to the organizations described in Airlie Foundation v. Commissioner, *supra*, Living Faith, Inc. v. Commissioner, *supra*, Easter House v. U.S., *supra*, and B.S.W. Group, Inc. v. Commissioner, *supra*, due to the commercial manner in which you conduct your activities; you operate for a nonexempt commercial purpose, rather than for a tax-exempt purpose. You prevent foreclosures through short sales resulting in the acquisition of homes to rent and resell above cost to individuals resulting in direct private benefit to your investors. In the first year of operations 40.1% of your total cash disbursement is going towards interest paid to investors. By the fifth year of operations the amount going to investors drops to 33.8%, but you are now maintaining operating cash of 50.7%. The bulk of these funds are coming directly to the organization through rents and property close outs. As stated above M has not established a broad based fundraising program. Only an insubstantial portion of the activities of an exempt organization may further a nonexempt purpose. The operation of a foreclosure rescue program that will charge rents above fair market value in order to ensure repayment to investors at a commercial rate of interest does not further an exempt purpose. Further you have indicated the class of individuals served by your organization has been selected as having the best potential return on investment and is not limited by other factors.

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. Based on the information provided in your application, your foreclosure assistance program will encompass a substantial part of your activities, and in addition, a substantial part portion of your income comes through rents and property close outs.

Finally, you have not satisfied the burden of proving that you have met all of the requirements of section 501(c)(3) of the Code. You have not proved that you satisfy the operational test; you have not demonstrated that you do not allow your net earnings to inure to private individuals; you have not showed that you are not organized to serve private interests; and you have not proved that you are organized for exempt purposes as-opposed-to commercial purposes. See Harding Hospital, Inc. v. United States, *supra*.

Based on the facts and information submitted, you are not operated exclusively for exempt purposes. Your proposed operations are commercial in nature, further a substantial nonexempt business purpose, and will further the private interests of investors. 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, 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.

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

Mail to:
Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:
Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements