

Internal Revenue Service
Appeals Office

Department of the Treasury

Date: MAR 3 1 2015

Employer Identification Number:

Number: 201526023
Release Date: 6/26/2015

Person to Contact:

Employee ID Number:
Tel:
Fax:

Officer

UIL: 501.03-30

Certified Mail

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code: effective February 5, 1999, the date of your incorporation..

Our revocation was made for the following reasons: (1) more than an insubstantial part of your activities were not in furtherance of an exempt purpose within the meaning of Teas. Reg. § 1.501(c)(3)-1(c); (2) you operated for the benefit of private interests within the meaning of Teas. Reg. § 1.501(c)(3)-1(d)(1)(ii); and (3) your primary activity was the operation of a business for a non-exempt purpose with the meaning of Teas. Reg. §1.501(c)(3)-1(e)(1). Accordingly you are not operated exclusively for exempt purposes as described in section 501(c)(3).

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

You are required to file Federal income tax returns on Forms 1120. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

If you were a private foundation as of the effective date of the adverse determination, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for

Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

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

Sincerely Yours,



Timothy D. Jarvis
Appeals Team Manager

CC:

Enclosure: Publication 892 and/or 556

Internal Revenue Service

**Department of the Treasury
31 Hopkins Plaza
Baltimore, Maryland 21201**

Date: January 12, 2007

**ORG
ADDRESS**

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

**Letter 3518 (Rev. 11-2003)
Catalog Number: 34800F**

00940

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Letter 3618 (Rev. 11-2003)
Catalog Number: 34806F

00941

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12 and 20XX12

LEGEND

ORG = Organization name XX = Date State = State website = website

ISSUE

Whether ORG, operated exclusively for exempt purposes within meaning of section 501(c)(3) of the Internal Revenue Code (Code)?

FACTS

The ORG was incorporated in the State of State on February 5, 19XX, and received exemption from Federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) in a determination letter dated May 7, 19XX. The organization changed its name to ORG, (ORG) in an amendment to the articles of incorporation filed on December 23, 20XX.

Essentially, ORG has operated a down payment assistance program, which provides funds to homebuyers, also referred to as gifts, for down payment or other expenses associated with the purchase of the sellers' homes, for example, the closing costs. Generally, funds are made available to any homebuyer who qualifies for a mortgage and purchases a home enrolled in the ORG's Down Payment Assistance (DPA) program. Despite some representations to the contrary, the home sellers or builders who sell their homes through ORG's DPA program are required to provide the funds that homebuyers receive from ORG. Thus, through the DPA program ORG facilitates the sales of homes of persons who pay it the service fees. ORG also refers to its DPA Program as the Gift Program.

Application for Exempt Status

ORG filed Form 1023 on February 16, 19XX, summarizing its activities as follows:

We will be providing down payment gifts to individuals and families for the purpose of purchasing a home. To qualify, people must fall into either low or moderate income categories as defined by FHA and/or Fannie Mae. They must qualify for a mortgage, complete an education requirement, demonstrate a need for down payment assistance and purchase a home in the program. We will promote our program through real estate agents, mortgage lenders and home sellers/builders.

In Part II, Activities and Operational Information, ORG provides that it will:

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1. Provide gifts of up to three percent of the contract sales price to low and moderate income homebuyers for homes included in the program. This activity will comprise 47.5% of ORG's activities and will represent 75% of its expenditures.
2. Collect service fees from home sellers and builders, for the amount of 3.75% of the contract sales price for their homes to be included in the program. The contributions from home sellers will be its ongoing and almost exclusive source of funding for future gifts to low and moderate income homebuyers. This activity will comprise 47.5% of ORG's activities and will be the source of 97% of its revenue.
3. Seek charitable contributions from people working in the real estate industry, for example, builders, real estate agents, settlement agents, and mortgage brokers. This activity will comprise 5% of ORG's activities and will be the source of 3% of its revenue.

The attachment to Form 1023, The ORG, The Gift Program Guidelines, provides:

The ORG Down payment Assistance Program is for all low to moderate income homebuyers in need of a down payment gift in order to purchase a home....

Homebuyers must purchase a home in the program, be approved for a mortgage, complete any HUD approved home buyer class and have their request submitted at least 48 hours prior to settlement. The down payment gift will be provided directly to the settlement agent for the homebuyer's down payment. The buyer must agree to return any gift funds not used towards the home purchase. Moreover, they must agree to return any gift funds in the event they do not purchase a home included in the Down Payment Assistance Program. The money we provide does **NOT** come from the seller of the home the buyers are purchasing. We have an account from which we provide these gift funds. We are fully supported by charitable contributions and fees. **We do not receive a single dollar of government funding!**

For homes to be included in program, the property seller or builder must agree to the terms of the ORG sales contract addendum and pay a service fee of 3.75%. This service fee insures the continued viability of our Down Payment Assistance Program. The home is then qualified for home buyers using our Down Payment Assistance Program. The Seller is not obligated to pay the service fee until the time of settlement. Furthermore, the Seller is not obligated to pay the fee if his or her home sale does not close.

Since our program is for low to moderate income homebuyers we will only include homes in our program up \$ and provide gift funds up to \$.

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The lender or real estate agent can not pay the seller's service fee, only the seller can pay it.

Homebuyers do *not* have to be first-time home buyers. We wish to promote continued home ownership and have seen many situations where homebuyers need our program to purchase their next home.

Homebuyers do not need to make any cash contribution towards the purchase of their home. This program can be used in conjunction with any other down payment assistance programs. Homebuyers may purchase with **0% down payment and closing costs**. They may also use any loan program available to them....

ORG had also indicated that it would utilize forms and form contracts to facilitate the DPA transactions. To apply for funds from ORG, a potential homebuyer would fill out the Down Payment Assistance Application (Application), a one page form, which does not ask for any information on the prospective homebuyer's income. The Application does not request any information that would enable ORG to assess the applicant's need for assistance and whether offering assistance to the applicant would further ORG's purported charitable purposes. To enroll a house into the DPA program a home builder would agree to the terms of the New Construction Contract Addendum, and a home seller would agree to the terms of the Resale Contract Addendum. Along with other requirements, the Addendums provide that:

The Seller/[Builder] further agrees to pay a service fee in the amount of \$ _____, which is 3.75% of the contract sales price of the home included in the Down Payment Assistance Program. In consideration, The ORG agrees to provide information regarding approved home buying classes and down payment assistance to the Buyer that qualify for the program. The Seller/[Builder] and Buyer recognizes and agrees that this fee is not to be used to provide down payment assistance to the Buyer of the subject property and the gift funds provided by The ORG are delivered from pre-existing Down Payment Assistance Program funds. The Seller/[Builder] understands that they are under no obligation to pay the service fee if the Buyer, using the ORG program, does not purchase the home included in the program from the Seller/[Builder]. The Seller/[Builder] is only obligated to pay the service fee upon successful closing/ settlement.

With respect to the homebuyers, the Addendums provide that:

The Buyer hereby agrees to diligently pursue a loan, sign all required ORG forms, follow all lender instructions and complete a HUD approved home buyer class. The Buyer further acknowledges that the ORG., does not warranty the subject property in any way, written or implied.

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Modifications to ORG's Program

In subsequent submissions to the Service and in its marketing materials, ORG has modified its DPA program, providing that homebuyers could receive towards down payment or closing costs three to ten percent of the purchase price of a home enrolled in the DPA program. ORG also modified its processing fee, providing that the fee would be \$ or .75 percent of the purchase price of a home, whichever is less. In its advertising materials, ORG explains the fees in connection with enrollment of a house into the DPA program and the processing fee as follows:

Typically, the fee for enrolling in the ORG Downpayment Gift Program is a program fee plus a processing fee of \$ or .75% of the contract sales price, whichever is less. Our fee is deducted from the seller's proceeds at settlement. However, ORG offers reduced pricing for builders and home dealers...

Website (3/23/20XX)

ORG explains the program fee and its connection to the processing fee as follows:

The amount of the program fee depends on the gift amount requested from ORG. If, for example, the buyer needs 3% from ORG for the down payment, ORG will provide the gift funds from its existing pool of funds. The seller agrees to replenish the pool of funds by paying a program fee of 3% plus a processing fee (up to \$). If the buyer needs 5% then 5% plus the processing fee is deducted from the seller's proceeds and so on and so forth. Id.

Also, on its Form 990 for the 20XX taxable year, in Part VI, ORG reported that it "...has added the redevelopment program. The program focuses on the restoration and revitalization of distressed homes, and on returning those rehabilitated properties to the market at prices that accommodate low to moderate income homebuyers. The charitable purpose is to revitalize blighted areas, lessening the burden of government in creating affordable housing for low to moderate income buyers."

ORG's Actual Activities during the Years under Exam

Since 19XX, ORG has operated a nationwide DPA program. This activity was ORG's primary activity during the years under examination. ORG has derived 99% of its revenue from the fees it charged home sellers and builders to participate in its DPA program. ORG restricted the use of the gift funds for purchase of a home that is enrolled in the DPA program. To enroll a house into the DPA program, ORG required home sellers or builders to agree to pay a service fee, which had two components: a program fee—always equal to the amount ORG gives to the homebuyer, and a processing fee—generally .75% of the purchase price of a home that ORG retained. The

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contractual terms required a settlement agency conducting the closing of a house enrolled in ORG's DPA program, to remit the service fees to ORG. The amount of funds ORG transferred to homebuyers ranged from three to ten percent of the purchase price of a home enrolled in the DPA program. However, that amount always corresponded and equaled to the amount that the sellers paid to ORG as the program fee.

In 20XX and 20XX, ORG did not solicit or receive any contributions from the general public or the government. For these years, ORG derived 99% of its revenue from the home sellers' and builders' service fees. ORG's total revenues for 20XX and 20XX were \$ and \$, respectively. Its net assets increased from \$ to \$ in 20XX and to \$ by the end of 20XX. On its Forms 990, it reported that it made gifts to homebuyers of \$ and \$ during 20XX and 20XX, respectively.

ORG funds its operation on on-going basis solely with the service fees it receives from home sellers and home builders. ORG does not have an established endowment or fund from which it could provide funds to homebuyers. ORG does not solicit contributions from the general public or the government. For the years under examination, there is no evidence that ORG received any contributions from the government or an individual unrelated or unconnected to the real estate transactions it facilitated.

In September 20XX, ORG began a redevelopment program by purchasing houses for rehabilitation and land for redevelopment. In 20XX, ORG purchased one property and in 20XX, it purchased seven homes which it renovated and sold by the end of 20XX. In 20XX, ORG derived income of \$ from these activities. For the years under examination, this activity had been negligible compared to ORG's DPA activity.

ORG marketed the DPA program to the general public via its internet website, and, directly, to individuals with ability to promote the program, for example, to home sellers, home builders, realtors, mortgage bankers, etc. On average, ORG received 4,000 applications per month from homebuyers nationwide. ORG incurred significant expenses for marketing the DPA program, for example, in 20XX, marketing was ORG's biggest expense at \$. In comparison, the second highest expense for that year was salary and benefits at \$. See Financial Statements and Independent Auditors' Report, the ORG., December 31, 20XX.

Despite its representations on Form 1023, ORG did not screen homebuyers or limited its assistance to low to moderate income homebuyers. ORG did not screen for individual's need for down payment or closing costs and did not in any way limit funds for purchases of houses in a defined geographic location undergoing economic depression. Instead, it relied on the mortgage lenders and realtors to qualify individuals for the DPA program. In fact, ability to obtain a mortgage on a home enrolled in ORG's DPA program was the only eligibility

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requirement for participation in the DPA program. ORG's promotional and advertising materials indicate that the DPA program is available to anyone who qualifies for a mortgage. On its website, under "Frequently Asked Questions," ORG answers "No" to the question "Are there any income requirements?" website (3/27/20XX). ORG advertised that "Few restrictions" is one of the benefits of ORG's DPA program to homebuyers. Website (3/27/20XX).

ORG did not conduct educational activities. Although ORG asserts that it provided homebuyers with the resources they need to make informed financial decisions, it did not submit any information about its educational programs, classes, or presentations. ORG's guidelines appear to require a homebuyer to complete any HUD approved homebuyer class before the closing. ORG does not conduct, sponsor, or participate in these classes, nor does it have safe guards in place to assure that a homebuyer actually completes any educational program or class on homeownership, financial management, or budgeting. ORG does not develop the educational materials and is not in any way connected to the HUD approved homebuyer education courses, which are otherwise available to the general public. See The ORG, Gift Program Guidelines.

Benefits of ORG's DPA program

ORG's advertising and marketing materials set forth in detail how the DPA program benefits individuals connected to the real estate transactions it facilitated, including, the sellers, realtors, builders, and lenders. For example, ORG's marketing materials for sellers' state: "Are you finding it difficult to sell your home? Maybe you're ready to move, but your home is still on the market. At ORG, we understand that this is a complicated, and sometimes stressful, process – we are here to help! Through the ORG Downpayment Gift Program, ORG expands the number of potential buyers for your home by removing the barrier of a large down payment. With more available buyers, ORG can reduce the time your home is on the market and make it easier to sell your home. Website (3/23/20XX).

Under the heading "Benefits of an ORG Partnership to a Home Seller," ORG provides:

- **Expand Buyer Pool, Shorten Time to Sell.** ORG has helped over 150,000 sellers more their home to a buyer. Results speak for themselves.
- **Easy to Use.** No one has a process as easy as ours. Try it!
- **Efficient.** No one in the industry moves faster; we immediately react to the circumstances of your transaction.

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- **Financial Strength and Stability.** The down payment gift money is there on time, every time.
- **Customer Service.** Acknowledged best in the industry, our competent staff is always ready to assist and serve.
- **Information.** We think the more everyone knows about the home buying process, the better. We have a state-of-the-art *Homebuyer Education Course* that informs both buyer and seller.
- **Marketing.** We help your real estate professional with an array of marketing materials, such as site signs, door knob hangers and postcards. An ORG home is an attraction to the buyer! Id.

To home builders, ORG states:

ORG respects the challenges and risks associated in building new communities and new homes.

As you move into the "seller" phase of the development, you must rely on dependable partners to assist you in selling your homes. ORG has an admirable track record of helping builders in this regard. Our down payment assistance program greatly expands the pool of potential buyers who could purchase homes in your communities. We provide up to 10% in down payment assistance to overcome one of the major obstacles for otherwise qualified buyers.

Our mission is aligned with yours – to put people into homes and create satisfaction with the buyer. Plus our selection of marketing materials can enhance your chances of success in selling out your development. Take your homes from selling to sold using ORG website (3/23/20XX).

With regard to real estate professionals, ORG states that:

At ORG, we know you want to close deals quickly and efficiently. After all, a satisfied home buyer is your best advertising. That's why ORG is your ideal down payment assistance provider partner.

ORG gives buyers up to 10% of the sales price of a home for a down payment or closing costs, removing the largest barrier for many prospective homeowners.

For listing agents, a down payment gift greatly expands the pool of potential purchasers; more eligible buyers means less time on the market.

Using ORG means dependability and consistency, perfect timing and efficiency – more closed deals done right. Website (3/23/20XX).

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With respect to benefits to settlement agents, ORG provides that:

Settlement Agents are the unsung heroes of any closing process....

As your partner, ORG aligns your goals with ours, to put people into homes. It must be done in a smooth transaction at the last minute bringing together a lot of information. ORG is consistently dependable; we fit seamlessly into the process, allowing you to do your job professionally....

Our program puts up to 10% toward down payment or closing costs, eliminating a barrier that often uncouples a transaction. We value your responsibilities and assist you in performing them. Website (3/23/20XX).

For real estate lenders ORG provides that "ORG will help increase your business – this translates into more closed deals and an increase in revenue." Website (3/23/20XX). It also provides that "[o]ur partnership extends to providing essential elements of a successful marketing program that can increase your business and visibility." *Id.*

Lessening the Burdens of Government

In a number of letters and responses to requests for additional information addressed to the Internal Revenue Service, ORG asserts that its activities are charitable mainly because they lessen the burdens of government by enabling individuals, who otherwise would not be able to purchase a house to achieve homeownership. *See* Letters dated: May 12, 20XX; February 7, 20XX, September 10, 20XX; May 6, 20XX. Specifically, ORG alleges that "ORG's program actually fulfills several functions that government has recognized as its own: educating and counseling home buyers, providing access to capital, and redeveloping blighted properties for resale at affordable prices." *See* ORG's letter dated, May 12, 20XX. In support of its position, ORG relies on a number of Federal legislative acts: the United States Housing Act of 1937, 42 U.S.C. § 1437; Section 2 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701; and sections 101, 102 and 202 of the Cranston-Gonzalez National Affordable Housing Act, U.S.C 12701, 12702 and 12721; and American Dream Downpayment Act of 20XX, H.R. 1276. *See* ORG's letter dated September 10, 20XX, *see also* ORG's letter dated, May 12, 20XX. Additionally, ORG points to recent legislative proposals in the United States Congress and government official statements. *Id.*

However, an independent report, *An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations*, submitted to the United States Department of Housing and Urban Development (March 1, 20XX) (Report) concludes that seller-funded down payment assistance has led to underwriting problems, which require immediate attention. The report also concludes

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that the processing fees charged by the seller-funded down payment assistance providers, which are passed through to homebuyers in higher property prices, have lead to an increase in the effective cost of homeownership. ORG's DPA program is identical to the typical down payment assistance program subject of the Report. A copy of the report is enclosed with this RAR.

LAW

Section 501 of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for, among other listed purposes, charitable or educational purposes, provided that no part of the net earnings of such corporations inures to the benefit of any private shareholder or individual. See I.R.C. § 501(c)(3).

Section 1.501(c)(3)-1(d)(1)(i) provides that an organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

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 § 501(c)(3). An organization must not engage in substantial activities that are not in furtherance of an exempt purpose. 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."

Section 1.501(c)(3)-1(d)(1)(ii) 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)(3)(i) provides, in part, that the term "educational" for section 501(c)(3) purposes includes the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(2) defines the term "charitable" for section 501(c)(3) purposes as including relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

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Section 1.501(c)(3)-1(e) 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) if the trade or business furthers an exempt purpose, and if the organization's primary purpose does not consist of carrying on an unrelated trade or business.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.), the U.S. Court of Federal Claims considered whether an organization that provided prenatal care and other health-related services to pregnant women, including delivery room assistance, and placed children with adoptive parents qualified for exemption under § 501(c)(3). The court concluded that the organization did not qualify for exemption under § 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. In addition, although the organization provided health care to indigent pregnant women, it only did so when a family willing to adopt a woman's child sponsored the care financially. 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 § 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 § 501(c)(3) because it also served private interests more than incidentally. The court found that the organization was created and funded by persons affiliated with entities of a particular political party and that most of the organization's graduates worked in campaigns for the party's candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting the party's 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 Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). The court concluded by stating that even if the political party's 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

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manner.” American Campaign Academy, 92 T.C. at 1077. See also Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 20XX), where the court stated:

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.

See also, Living Faith Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991) (holding that a religious organization which ran restaurants and health food stores in furtherance of its health ministry did not qualify for tax-exempt status because it was operated for substantial commercial purposes and not for exclusively exempt purposes).

Rev. Rul. 20XX-27, 20XX-21 I.R.B. 915, sets forth standards for determining when an organization that provides funds to homebuyers for down payment or closing costs qualifies for exemption from Federal income tax under section 501(c)(3). In Situation 2, an organization provides down payment assistance to low-income individuals and families. It offers financial counseling seminars and conducts other educational activities to help prepare potential low-income homebuyers for the responsibility of home ownership. Under the organization’s grantmaking procedures, the staff considering a particular applicant’s application knows the identity of the party selling the home to the grant applicant and may also know the identities of other parties, such as real estate agents and developers, who may receive a financial benefit from the sale. Moreover, in substantially all of the cases in which the organization provides down payment assistance to a homebuyer, the organization receives a payment from the home seller. Further, there is a direct correlation between the amount of the down payment assistance provided by the organization to the homebuyer and the amount of the home seller’s payment to the organization. Finally, the organization does not conduct a broad based fundraising campaign to attract financial support. Rather, most of the organization’s support comes from home sellers and real estate-related businesses that may benefit from the sale of homes to buyers who receive the organization’s down payment assistance.

The revenue ruling holds that the organization described in Situation 2 is not exempt from Federal income tax under section 501(c)(1) because it finances its down payment assistance activities with contributions from sellers and individuals that stand to benefit from the transactions that the organization facilitates. The fact that the organization relies on seller’s payments for most of its funding and in substantially all of the transactions the payment from a home seller corresponds to the amount that the organization gives to a homebuyer indicate that the benefit to the home seller is a critical aspect of an organization’s operations. Rev. Rul. 20XX-27, also holds that the payments to homebuyers in Situation 2 are not gifts, but rebates or purchase price reductions because sellers make the payments not out of detached and

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disinterested generosity, but in response to an anticipated economic benefit, namely the sale of their home at a higher price and in less time.

Rev. Rul. 20XX-27, Situations 1 and 3 describe organizations that provide down payment and closing costs to qualified homebuyers, in the manner that could qualify for exemption from Federal income tax under section 501(c)(3). In Situation 1, the organization's purposes and activities relieve the poor, distressed and underprivileged by enabling low-income individuals and families to obtain decent, safe and sanitary homes. In Situation 3, the organization's purposes and activities combat community deterioration in a specific, economically depressed area that has suffered a major loss of population and jobs. Importantly, these organizations conduct broad based fundraising programs to attract gifts, grants, and contributions from several foundations, businesses, the general public, and receive funding from government agencies. See Rev. Rul. 20XX-27. Their policies and procedures prevent the grantmaking staff from knowing identities of the parties involved in the transaction and whether anyone related to the transaction had made or agreed to make or made a contribution to the organization.

Under Treas. Reg. § 1.501(c)(3)-1(d)(2), the term "charitable" includes lessening the burdens of government.

Rev. Rul. 85-1, 1985-1 C.B. 177, holds that an activity is a burden of government only if there is an objective manifestation by a governmental unit that it considers the activity to be its burden. The ruling also provides that little weight should be given to government officials that merely praise or express approval of an organization and its activities. Instead, the government must formally recognize the organization and its operations as relieving its burdens. Several factors set forth in the revenue ruling bear on whether the governmental unit has made an objective manifestation. These factors are:

1. A statute specifically creates the organization and clearly defines the organization's structure and purposes.
2. The activity is an integral part of a larger governmental program, or is acted jointly with a governmental unit.
3. The governmental unit controls the activities of the organization, for example by appointing the board members.
4. The organization pays governmental expenses.
5. Regular government funding of the organization's activities through grants or general obligation bonds backed with the full faith and credit of the governmental (as opposed to general revenue bond financing).
6. The governmental unit is not prohibited from performing the particular activity.

Rev. Rul. 85-2, 1985-1C.B. 178, holds that an organization lessens the burden of government if it engages in activities that a governmental unit considers to be its burden and such activities

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actually lessen such governmental burden. An organization must demonstrate through all the relevant facts and circumstances that a governmental unit considers the organization to be acting on its behalf, thereby freeing up the government assets that would otherwise be devoted to the particular activity.

In Columbia Park and Recreational Association, Inc. v. Commissioner, 88 T.C. 1 (1987), aff'd without published opinion 838 F. 2d 465 (4th Cir. 1988), the court provided that expending funds for services and items similar to those in the budget of a municipal government is insufficient to establish that a governmental unit accepted the activities as its responsibility.

In Public Industries, Inc. v. Commissioner, T.C. Memo 1991-3, the court stated that even if a governmental unit considers an activity to be a proper governmental function, an organization must establish that it has a solid relationship with the governmental unit to support a finding that the organization was acting on the governmental unit's behalf. On the issue of whether the organization's activities actually lessen the burdens of government, the court noted that showing that an organization's activities might improve general economic conditions or might reduce the negative consequences if the activities are not conducted is not enough to demonstrate that organization's activities actually lessen the government's burden.

In Quality Auditing Company, Inc. v. Commissioner, 114 T.C. 498 (20XX), an organization that developed a certification program for safe construction claimed that it was lessening the burdens of government. Governmental agencies were among those that requested that the organization develop the certification program. The court held that the government's concern with obtaining high quality work in public construction projects falls short of establishing that the government considers the certification program to be its own responsibility and that the organization was acting on its behalf. In addition, the court stated that even if the certification program lessened the burdens of government, because it also conferred benefit on private owners and developers, it furthered a substantial nonexempt purpose by lessening the burdens on private parties.

ANALYSIS

ORG does not qualify as an organization described in I.R.C. § 501(c)(3) because it operates a program that does not exclusively serve an exempt purpose described in section 501(c)(3). It is organized and operated primarily for a nonexempt business purpose of facilitating real estate transactions for private benefit of the parties involved in the transactions, including sellers, home builders, lenders, real estate professionals, and homebuyers.

ORG's DPA program does not further a charitable purpose

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ORG's DPA program does not provide relief of the poor and distressed or of the underprivileged within the meaning of Treas. Reg. § 1.501(c)(3)-1(d)(2). ORG does not operate the DPA program to address the needs of low-income people by enabling them to obtain decent, safe, and sanitary housing. See Rev. Rul. 20XX-27, Situation 1, See also Rev. Rul. 70-585, Situation 1. Despite its representations on Form 1023, in fact, ORG has no income limitations for participation in its DPA program, and it does not screen the applicants. The Application for down payment assistance does not contain any questions to establish an applicant's income level. The mortgage and real estate companies determine who is eligible for assistance from ORG solely based on an applicant's ability to sustain mortgage payments on the house enrolled in the DPA program. ORG's advertising and promotional materials indicate that the DPA program is open to anyone who otherwise qualifies for a mortgage, without any income limitations. In fact, ORG advertised its DPA program as having no income restrictions and few restrictions otherwise. Website (3/27/20XX) and website (3/27/20XX).

ORG asserts that the DPA program is designed to assist a charitable class because only a house of specified value may be enrollment in the program. First, there is no evidence that ORG limited enrollment of homes to the specified limit. Second, even if it did so, limiting a home's sale price does nothing to assure that ORG assisted members of a charitable class, low-income individuals.

ORG does not limit its assistance to a geographic area experiencing economic depression, deterioration, or neighborhood tensions. See Rev. Rul. 20XX-27, Situation 3 and Rev. Rul. 70-585, Situation 4. Assistance to homebuyers is available irrespective of the property's location so long a home seller or home builder enrolls the property into the DPA program by agreeing to the terms of the New Construction Contract Addendum or Resale Contract Addendum. Facilitating the purchases of homes in a broadly defined geographic area does not combat community deterioration or serve other social welfare objectives within the meaning of section 501(c)(3) of the Code.

ORG's DPA program is not educational within the meaning of Treas. Reg. § 1.501(c)(3)-1(d)(3)(i) because its educational activities are minimal compared to the primary activity of facilitating real estate transactions. Further, the educational aspects of ORG's activities are merely incidental to the advertising and marketing of the DPA program. Although ORG has indicated its intention to provide education for homebuyers, there is no evidence that ORG in fact did so. Also, there is no evidence that ORG required or verified the applicants' participation or completion of any educational programs or financial counseling. There is no evidence that ORG provided any meaningful financial counseling or instruction on homeownership and budgeting to meet its purported charitable purpose of educating homebuyers about the responsibilities of home ownership. Moreover, even if ORG conducted substantial educational activities, in accordance with Rev. Rul. 20XX-27, it would not qualify for exemption from

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Federal income tax under section 501(c)(3) because it is funded primarily by sellers' contributions, and it is operated for the benefit of individuals connected to the real estate transactions ORG facilitates.

ORG's DPA program is virtually identical to the program described in Rev. Rul. 20XX-27, Situation 2. ORG does not solicit or receive funds from any sources other than sellers' service fees. Rather than having policies to withhold the identity of contributors and home sellers from the grantmaking staff, ORG's policies mandate that before funds to a homebuyer are made available ORG's staff must make sure that the house seller or builder had agreed to pay ORG the service fee (the program fee and the processing fee). In essence, ORG's policy is to insure that the seller agrees to reimburse ORG dollar-for-dollar for the amount ORG transfers to a homebuyer.

Similarly to the organization in Rev. Rul. 20XX-27, through a circular flow of the money, ORG allows homebuyers to obtain cash for down payment or closing costs, to satisfy the requirements for Federal Housing Administration (FHA) insured mortgages. Generally, three percent down payment is required for an FHA mortgage. Under the applicable Department of Housing and Urban Development (HUD) guidelines, the down payment must be made with a homebuyer's funds or a gift to a homebuyer from a relative, employer, labor union, charitable organization, close friend, governmental agency, or public entity. Thus, as a purported charitable organization, ORG has acted as conduit between the homebuyer and the home seller. The home sellers provide the funds that the home buyers receive from ORG for the down payment on a FHA insured mortgage. Acting as a conduit, ORG operates for the substantial nonexempt purpose of facilitating the sales of homes on behalf of home sellers by enlarging the potential market of buyers.

ORG's representation that 57 percent of homebuyers it assisted were in the "middle-income" census tracts, does not alter the fact that ORG failed to screen the applicants and operate the DPA program according to its representations on Form 1023. ORG made this finding after it provided the assistance to the homebuyers, and after the Service challenged ORG's DPA program. By not screening applicants for the DPA program prior to making funds available to homebuyers and by not having any policies or safeguards to insure that payments were made to low or moderate income individuals, ORG failed to show that its down payment assistance to homebuyers, even without considering the enormous benefit to the home sellers, was exclusively in furtherance of its purported charitable purposes. Further, ORG operated the DPA program in a manner that is materially different from its representations on Form 1023.

Even if ORG's DPA program was directed to exclusively serve low-income individuals or individuals purchasing homes in disadvantaged communities, ORG's total reliance for financing of its DPA program on home sellers and individuals connected to the real estate transactions

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demonstrates that the DPA program provides substantial benefit to private parties involved in the transactions. See Rev. Rul. 20XX-27, Situation 2. ORG does not facilitate transactions and does not assist a homebuyer who may otherwise be a member of a charitable class; unless ORG is assured that a home seller will make an equivalent contribution and pay a processing fee. The seller's obligation to make a payment to ORG is contingent on closing of the real estate deal. The homebuyer's receipt of the down payment assistance funds from ORG is contingent on purchasing of a home enrolled into ORG's DPA program.

ORG does not engage in broad based fundraising, instead, it exclusively relies on payments from individuals which directly stand to benefit from the transactions ORG facilitates. Similarly to ORG, in Columbia Park and Recreation Association, the organization did not solicit or receive voluntary contributions from the public. Instead, the organization's revenue came solely from the members whom it served. See Columbia Park and Recreation Association, 88 T.C. at 20. The court stated that the fact that the organization's method of financing was dissimilar from a typical public organization was an important factor undercutting the organization's position that it was organized and operated for a charitable purpose. The court said "[p]etitioner thus lacks this normal trait of a section 501(c)(3) organization, or more specifically, an organization which operates primarily for a public interest." Id. at 20, 21.

The manner in which ORG operates its DPA program shows that the private benefit to various parties connected to the real estate transactions is the intended outcome of the Organization's operations rather than a mere incident of such operations. ORG has outlined these benefits on its website and in its marketing materials and they are significant. The Organization's down payment assistance procedures are designed to channel funds in a circular manner from the sellers to the buyers. Because the amount of transfer to a homebuyer always equals the amount seller transfers to ORG, in fact, the actual source of the "gift" funds is from homebuyers, not a pre-existing pool of funds as ORG claims. Further, in accordance with Rev. Rul. 20XX-27, Situation 2, the funds ORG makes available to homebuyers are not "gifts" because they are not made out of detached and disinterested generosity, but rather are made in response to an anticipated economic benefit, the sale of an enrolled home in less time and for a price which may be higher than the seller would otherwise be able to obtain.

Like the organization in American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989) and Rev. Rul. 20XX-27, Situation 2, ORG's structure and operations are designed to assist the private parties who fund it and give it business. The home sellers who enroll their homes in ORG's DPA program benefit from getting access to a wider pool of buyers, thereby decreasing their risk and the length of time that their homes are on the market. They also benefit by being able to sell their home at the home's full listed price or by being able to reduce the amount of the negotiated discount on their homes. The homebuyers who participate in ORG's DPA program benefit by being able to purchase a home without having to commit more of their own funds. Real estate professionals who participate in ORG's DPA program, from real estate brokers to

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escrow companies, benefit from increased sales volume and the attendant increase in their commission and compensation.

ORG charges a market rate fee commensurate to the services it provides and makes significant profit. ORG does not provide assistance to anyone within a charitable class it purportedly intends to benefit. Instead, it provides assistance only to homebuyers who purchase a home for which the seller had agreed to pay ORG the service fee. In this respect, ORG is identical to the organization in Easter House, which provided health care to indigent pregnant women, but only when a family willing to adopt a woman's child sponsored the care financially.

Substantial Nonexempt Purpose

Only an insubstantial part of activities of a tax-exempt organization's maybe in furtherance of a nonexempt purpose. Treas. Reg. § 1.501(c)(3)-1(c)(1). An organization will not be regarded as a tax-exempt entity if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Id. As the Supreme Court held in Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279, 283 (1945), 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.

ORG has been organized and operated primarily for a nonexempt business purpose of facilitating real estate transactions for private benefit of the parties involved in the transactions. ORG's promotional material and its marketing activities show that ORG operated in a manner consistent with a commercial business seeking to maximize sales of services, rather than in a manner consistent with a charitable or educational organization seeking to serve a charitable class in furtherance of the purposes enumerated in section 501(c)(3). Facilitation of real estate transactions has been ORG's primary activity, for which ORG charged significant market rate fees and derived substantial profit. ORG's operations are similar to an organization which was denied exemption because it operated a conference center for commercial purposes. See Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 20XX).

Operating a trade or business of facilitating home sales is not an inherently charitable activity. ORG's primary activity was in furtherance of a nonexempt business purpose, mainly maximizing the number of transactions and fees it collected. Similarly to the organizations in American Campaign Academy, supra, and Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir. 1988), a substantial part of ORG's activities furthered a commercial purpose rather than a charitable purpose within the meaning of section 501(c)(3) of the Code.

Lessening the burdens of government

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ORG's primary activity has been the facilitation of real estate transactions and there is no evidence showing that a governmental unit has accepted or recognized this activity as its burden. As a tax neutral party, with exclusive source of funding from home seller's service fees, ORG enables homebuyers without cash to obtain from their home seller or builder cash for down payment or closing costs. As such, ORG acts merely as a conduit, facilitating transfers of cash from home sellers or homebuilder to homebuyers. For these services, ORG charges home sellers' market rate processing fees and generates a significant profit. These fees have lead to an increase in the effective cost of homeownership. See the Report.

There is no object manifestation that a governmental unit has accepted as its burden facilitation of real estate transactions in the manner as conducted by ORG. There is no statute specifically creating ORG or any other organization conducting similar activities. In fact, the FHA has expressly provided that it does not approve non-profits down payment assistance programs similar to ORG. See HUD Handbook 4155.1 and Mortgage Letter 00-8. Also in support of its position, ORG points to statement of government officials, however, as Rev. Rul. 85-1 provides, little weight should be given to government officials' statements praising or expressing approval of the organization or the activities it conducts.

There is no evidence of interrelationship between ORG and a governmental unit. No governmental unit directly controls or participates in ORG's activities or operations. ORG's activities are only indirectly subject to the applicable real estate and mortgage laws. There is no Federal or state law or regulation directly governing the DPA programs or ORG's activities. Further, no governmental unit appoints ORG's board of directors and there is no evidence that a governmental unit has ever previously engaged in the activities that ORG performs or similar activities. See Rev. Rul. 85-1 and Rev. Rul. 85-2.

ORG does not defray expenses of a governmental unit because there is no evidence that a governmental unit would engage in the type of transactions that ORG performs. ORG bears no economic burden from providing grants to homebuyers because it does not use its own funds to provide any assistance to homebuyers. ORG does not conduct broad based fundraising, but instead relies exclusively on house sellers' contributions to fund its DPA program. To the extent that the house sellers' bear the economic burden of the transfers of cash to the homebuyers, arguably they are the once, and not ORG, that defray some costs that a government could potentially incur if it choose to provide cash towards down payment or closing costs to any individual regardless of their income, race, homebuyer status, or geographic location. ORG receives no grants from any governmental unit. As stated above, its operations are sustained exclusively by fees and contributions from house sellers. Similarly to a business entity, rather than a governmental expenditure program, ORG derives significant profits from its activities.

ORG's activities may actually harm the homebuyers it purports to help. For example, an independent report has concluded that tax-exempt organization's programs similar to the ORG's

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DPA program have lead to mortgage underwriting problems and higher cost of homeownership. See the Report. Specifically, the Report state that "...the seller-funded Downpayment Assistance Program (DAP) structure leads to a lessening of loan underwriting quality... Another factor supporting our conclusions was the lack of borrower readiness to undertake the responsibilities of homeownership, as reported by underwriters, realtors, and the borrowers themselves. Furthermore, the effective costs of homeownership are increased even more by the processing fees charged by the seller-funded DA providers which get passed through to borrowers in higher property prices. In some counties the inflated sales prices results in higher settlement fees as well." The Report at viii, ix. Additionally, the Report states:

Increased cost of homeownership to borrowers receiving seller-funded DA without realizing any tangible benefit associated with the increased costs. These costs include seller-funded DAP processing fees, mortgage payment protection insurance premiums and higher settlement costs when the expense items are calculated based on a percentage of the sales price.

Another study, conducted by the Office of Inspector General (OIG) (Audit Case Number #), has concluded that mortgages involving assistance from tax-exempt organizations provided in the manner similar to ORG, should be ineligible for FHA insurance.

Independent of the question of what a governmental unit recognizes as its burden, ORG's activities go far beyond the activities which the government has arguably recognized as its burden. Contrary to the ORG's DPA program, the government's involvement in promotion of homeownership is narrowly tailored, targeting mainly first-time, low-income, veterans, and minority homebuyers. For example, the American Dream Downpayment Initiative (ADDI) is a Federal program aimed at increasing homeownership among lower income and minority households. ADDI provides grants to low-income, first-time purchasers of a single-family home for down payment and closing costs. FHA Zero Down Payment and Payment Incentives program is another Federal program aimed at lowering the barriers to homeownership by allowing first-time homebuyers with strong credit record to finance 100 percent of the home purchase price and closing costs. The Department of Veterans Affairs administers a home loan program, which is aimed at increasing homeownership opportunities for the eligible veterans. The program allows veterans to purchase a home without any down payment and under favorable terms. Under the FHA guidelines, the grants to homebuyers under these programs are gifts, not mere inducements to purchase. Furthermore, through these programs the Federal government does not merely facilitate real estate transactions through transfers of cash in a circular manner between parties interested in the real estate transactions. To take advantage of these programs, a homebuyer is not limited to purchasing a house enrolled in the program. Furthermore, a house seller is not required to make a contribution to a government agency or pay any fees for selling a house through one of these programs. Further, unlike ORG's DPA

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program, these government programs have strict income or status requirements before assistance is given to a homebuyer.

The determination of whether an organization actually lessens a burden of government is also made based on all relevant facts and circumstances. See Rev. Rul. 85-1. A favorable working relationship between the government and the organization is strong evidence that the organization is actually lessening the burdens of government. Id. ORG's does not actually lessen the burdens of government because its activities are not similar to the activities that the government has arguably accepted as its burden. ORG's activities, as explained above, may actually increase the burdens of government. Through its activities, it merely facilitates real estate transactions for the benefit of private parties connected to the real estate transactions. We find no evidence that ORG has a working relationship with HUD, FHA, VA, or any federal government agency that works on lowering barriers to homeownership. We also find no evidence that in the absence of ORG a government unit would engage in the activities now being performed by ORG. Accordingly, there is no objective manifestation that the ORG is acting on behalf of a governmental unit. See Public Industries, Inc. v. Commissioner, 61 T.C.M. 1626.

Even if ORG's activities improve economic conditions of homebuyers or neighborhoods, it is not enough to show that ORG actually lessens the government's burden. Public Industries, Inc. As in Columbia Park and Recreation Association, the benefit to private individuals is an integral part of ORG's DPA program. Columbia Park and Recreation Association, 88 T.C. at 17. Any benefit to homebuyers or the public from ORG's activities is merely incidental and relatively insubstantial to the benefits ORG provides to the parties related to real estate transactions it facilitates. Thus, analogous to the situation in Quality Auditing Company, Inc., even if the DPA program lessen the burdens of government, because it also conferred substantial benefits on individuals connected to the real estate transactions, including home sellers, builders, lenders, real estate professionals, and homebuyers, ORG lessens the burdens of private parties, thereby furthering of a substantial nonexempt purpose.

Not every activity concerning which a governmental unit passes legislation or expresses an interest in can be considered as an activity which the government unit has assumed as its burden. The government is interested in all aspects of the lives of its citizens and the enactment of various pieces of legislation may indicate that the government has an "interest" in the activity. The government's interest in an activity is not the equivalent of the government assuming the burden of the activity because there must be an objective manifestation that a government accepts the activity as its own burden. ORG failed to show that a governmental unit has accepted as its burden the activities it conducts, and it failed to establish that its activities actually lessen that burden.

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The legislative initiatives that ORG cites do not in any way establish that the Federal government has accepted as its burden provision of down payment and closing costs to any individual who qualifies for a mortgage in the manner as provided by ORG. Instead, these legislative acts are a reflection of a goal of the national housing policy, to promote broad based homeownership. They reflect the government's commitment to bringing down the barriers to homeownership and promotion of homeownership by minorities, veterans, first-time homeowners, and low to moderate income individuals. In fact, ORG recognizes this in stating that "[t]hrough DPA and complementary programs, ORG helps achieve the Federal Government's goal of promoting home ownership, eliminating prejudice, alleviating poverty, and building and sustaining stable neighborhoods and communities – all without government funding or taxpayer dollars." See ORG's Letter dated May 12, 20XX, at 8.

ORG's reliance on the HUD's approval of gifts from charitable organizations to homebuyers for down payment is misplaced because according to the guidelines, ORG's transfer of funds to a homebuyer is not a gift, but is nothing more than an inducement to purchase a house listed in the DPA program. The FHA rules provide that: "[t]he gift donor may not be a person or entity with an interest in the sale of the property, such as the seller, real estate agent or broker, builder, or any entity associated with them. Gifts from these sources are considered inducements to purchase and must be subtracted from the sales prices. No repayment of the gift may be expected or implied. (As a rule, we are not concerned with how the donor obtains the gift funds provided they are not derived in any manner from a party to the sales transaction.)" In the case of ORG, a home seller is in fact the obligated source of the homebuyer's down payment assistance "gift" from ORG. ORG's grants are derived entirely from a required payment from a house seller with interest in the real estate transaction. ORG's grant to a homebuyer is intrinsically tied to the home seller's payment in that a home seller's payment is the exclusive source of money ORG transfers to a homebuyer, and the amount of each seller's contribution is always equal to the amount ORG transfers to the homebuyer plus a processing fee. Thus, ORG is merely a conduit between the homebuyer and home seller and its argument that the house sellers' contributions only replenish the down payment assistance funds has no merit and represents an argument of form over substance.

ORG points to its participation in the State's program, "OPPORTUNITY: Home Ownership Program," and the request from the Governor of State to provide down payment assistance with the state's Mortgage Finance Authority (MFA) as evidence that its activities have been recognized as the burden of government. However, ORG's involvement in these programs did not begin until 20XX, well after the start of its operations and after the tax periods under examination. Furthermore, ORG has never provided any substantiation for this agreement. It has failed to show that either the government of State or State have recognized, accepted, or regarded ORG's activities as their burden. There is no evidence that State or State showed an indication that ORG was assuming their burdens.

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CONCLUSION

ORG does not operate in a manner that exclusively furthers a charitable or educational purpose. Facilitating real estate transactions is a nonexempt business purpose and it has been ORG's primary activity during the years under examination. ORG operates in a manner indistinguishable from a commercial enterprise. To maximize its profits, ORG markets and advertises its program and charges market rate processing fees. Its activities are funded solely by service fees from sellers and house builders. ORG does not solicit funds from the general public or the government. ORG's activities benefit to substantial degree individuals connected to the real estate transactions it facilitates, rather than members of a charitable class, including homebuyer, sellers, home builders, lenders, and other real estate professionals. At best, ORG's educational and charitable activities are incidental to its primary activity of operating the DPA program while accumulating substantial profits. ORG do not lessen a burden of government because there is no evidence that a governmental unit has accepted or recognized the activities performed by ORG as its burden and that ORG actually lessen the burden.

For the foregoing reasons, revocation of exempt status is proposed. Because the facts show that, in 20XX and 20XX, ORG operated in a manner materially different from that represented in its Form 1023, the government proposes that the revocation be effective retroactively to the date of the organization's inception. ORG will be allowed 30 days to review this report and respond with a protest.