

Polsinelli | Shalton
Welte | Suelthaus_{PC}

700 West 47th Street, Suite 1000 | Kansas City, MO 64112-1802
(816) 753-1000 | Facsimile: (816) 753-1536 | www.pswslaw.com

Bruce R. Hopkins
(816) 360-4371
bhopskins@pswslaw.com

May 10, 2006

**BY FAX (202) 283-9973
AND UNITED STATES MAIL**

Steven T. Miller
Commissioner, TE/GE
Internal Revenue Service
1750 Penn Building
Room 684
Washington, DC 20224

Dear Mr. Miller:

The purpose of this letter is to request withdrawal of Revenue Ruling 2006-27, issued on May 4, 2006, and reissuance of it in proposed (and perhaps revised) form for public comment and a hearing.

The matter of tax exemption for down payment assistance organizations is far too complex and important to be dealt with in typical revenue ruling fashion. For one thing, this subject goes far beyond the tax law and directly affects the federal government's homeownership policies and goals. The ruling does not take into account the rules of the Department of Housing and Urban Development, which permit down payment assistance provided by charitable organizations. If this ruling stands as is, hundreds of thousands of low- and moderate-income individuals and families will be adversely impacted inasmuch as they will no longer be able to obtain the benefits of homeownership through Federal Housing Administration-insured mortgage loans.

The essence of the revenue ruling is focus on home seller-financing of down payment assistance gifts (or grants). The ruling, however, is vague as to the point. HUD rules do not allow any person with an interest in the sale of the home, such as the seller, real estate agent or broker, builder, or any entity associated with them, to be the direct source of down payment assistance. These rules, however, permit a home seller to make a payment to a charitable down payment assistance provider, where the payments are transferred to the charity's general treasury and used in conjunction with subsequent down payment assistance transactions. Situation 2 of Rev. Rul. 2006-27 does not accommodate this fundamental distinction; a revised revenue ruling should do so.

In connection with the law cited in the ruling, the glaring omission is Rev. Proc. 96-32. This is significant because that revenue procedure is precedent for some participation in these

Steven T. Miller
May 10, 2006
Page 2

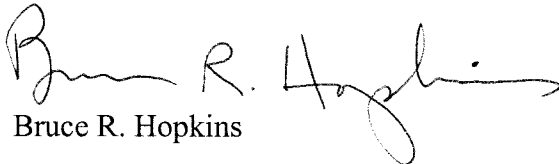
programs by moderate-income prospective homebuyers who qualify as “distressed.” Rev. Rul. 2006-27 makes reference to the need for down payment assistance activities that relieve the “poor and distressed.” The IRS revised this formulation in 1979 to reference “poor or distressed” (Rev. Ruls. 79-17, 18, and 19). Rev. Rul. 2006-27 does not take account of this law change.

Situation 2 of Rev. Rul. 2006-27 states that an organization’s receipt of payments from home sellers and an organization’s reliance on this type of funding leads to the conclusion that private benefit is a “critical aspect” of the down payment assistance organization’s operations. There is, however, a considerable disconnect between these two facts. Also, the revenue ruling does not take account of the fact that payments like this from home sellers, even though they do not constitute gifts, can still be forms of public support under Code section 509(a)(2).

Finally, there is a mistake in the analysis section of the revenue ruling, pertaining to Situation 2, which refers to home seller payments to down payment assistance providers as “contributions.” This conclusion is inconsistent with IRS ruling policy.

Thus, because of the policy implications, and mistakes of law and fact in the ruling, I request that it be withdrawn, perhaps modified, and reissued in proposed form to facilitate public comment and full consideration of the many issues raised, directly and indirectly, by Rev. Rul. 2006-27.

Sincerely,


Bruce R. Hopkins

BRH:cg

031239 / 068365
BRHOP 1342111