[redacted]

Person to Contact: [redacted]
Telephone Number: [redacted]
Refer Reply to:
Internal Revenue Service
[redacted]

Date: APR 10 1989

Dear Applicant:

We have considered your application for recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

The information submitted discloses that you were formed on [redacted] by a Declaration of Condominium Ownership. You are subject to the Condominium Property Act of [redacted].

The purpose of your association is to administer a condominium. The activities of your association include the maintenance and repair of the common elements of the condominium. Your income is derived from assessments against the unit owners who are the members of your association.

Section 501(c)(3) of the Code provides for the exemption from Federal Income Tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1 of the Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows:
"(a) Organizational and operational tests. (1) 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 of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. (2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in Section 501(c) (3)...."

| | Initiator | Reviewer | Reviewer | Reviewer | Reviewer | Reviewer | Reviewer |
|---|---|---|---|---|---|---|---|
| Code | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | |
| Surname | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] | |
| Date | 4/6/89 | 4/6/89 | 4/6/89 | 4-6-89 | 4-7-89 | 4/7/89 | |

Form 1937-A (Rev. 6-80) Correspondence Approval and Clearance — Department of the Treasury/Internal Revenue Service

[redacted]

"(b) Operational test. (1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. (2) Distribution of earnings. 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(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in Section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either organizational 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 will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under Section 501(c)(3) to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

[redacted]

Section 501(c)(4) of the code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 74-17, 1974-1 C.B. 130, holds that an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption under Section 501(c)(4) of the Code.

By virtue of the essential nature and structure of a condominium system of ownership the rights, duties, privileges, and immunities of the members of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owners acquisition and enjoyment of his property in the condominium. In addition, condominium ownership necessarily involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance, and care of which necessarily constitutes the provision of private benefits for the unit owners.

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal Income Tax under Section 501(c)(3) or Section 501(c)(4) because you are operated primarily for the private benefit of your members.

[redacted]

A homeowners association that is not exempt under Section 501(c)(4) and that is either a condominium management association or a residential real estate management association generally may elect, under the provisions of Section 528, to receive certain tax benefits that, in effect, permit the exclusion of its exempt function income from its gross income. The election is made each year by filing Form 1120-H. For more information, see Publication 588 Tax Information for Homeowners Associations.

If you do not agree with these conclusions, you may within 30 days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after you have submitted your brief to the Chicago District office and we have had and opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 892, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Sections 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory ju gment of decree under this section shall not b issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

[redacted]

If we do not hear from you within 30 days from the date of this letter this determination will become final. In accordance with Code Section 6104(c) we will notify the appropriate State Officials of this action.

You are required to file Federal Income Tax Returns.

Please keep this determination letter in your permanent records.

If you agree with this determination please sign and return the enclosed Form 6018.

Sincerely yours,

[redacted]

District Director

Enclosures:
Publication 892
Publication 588
Form 6018