

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MAR 10 1986

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code.

The information submitted discloses that you were incorporated under the Non-Profit Corporation Act on [REDACTED] to provide for maintenance, preservation, and architectural control of common areas and the landscaping set back areas in real property comprising [REDACTED] acres known as [REDACTED]. The Nestated Protective covevants of the association states that the building sites permitted shall be of a commercial nature and residential (including single-family, multifamily, or townhouses development and/or condominium development).

The membership of the association is composed of two classes:

Class A.: members with the exception of the owner, shall be entitled to one vote for each acre owned in fee.

Class B.: member shall be the owner and shall be entitled to ten votes for each acre owned in fee.

Membership is required of every property owner in the development and they are obligated to pay the assessment and it is secured by continuing lein upon the property against which the assessment is made. There are currently [REDACTED] Class A members having [REDACTED] cumulative votes. These members consist of commercial property owners which have office buildings, furniture showroom, hotel, medical clinic, dental clinic, office/warehouse units and property whose use is to be determined. The Class B member has a total of [REDACTED] votes.

The property and affairs of the association are managed by a Board of Directors who need not be members of the association (but if not members must be employees or agent there of). Currently, the Board of Directors. Also compose the Archilectural Control Committe of the association and are employees of the owner of [REDACTED].

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
		[REDACTED]	[REDACTED]				
Surname		[REDACTED]	[REDACTED]				
Date		3-10-86	3/10/86				

The activities include the care, upkeep, and surveillance of the association's common areas. The association is the enforcer of the covenants and deed restrictions through the actions of the Architectural Control Committee.

Section 501(c)(4) of the Internal Revenue Code provides exemption for:

"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 betterment and social improvements."

"(a)(2)(i) 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 *** The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit.***"

Revenue 69-280, 1969-1 Cumulative Bulletin 152 held that an organization was operated primarily for the private benefit of members and any benefits to the community are not sufficient to meet the requirement of the regulation that the organization be operated primarily for the common good and general welfare of the people of the community, therefore, it does not qualify under section 501(c)(4) of the Code.

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

The information submitted shows that you are formed by a developer as an integral part of a plan for the development of a subdivision. Membership in the association is required of all purchasers. Membership is open only to the developer and those who purchase property. The support for the association is periodic assessments against members property and an unpaid assessment constitutes a lien on the property. The voting power of the association is held by the developer due to the amount of land held.

The developer controls the association not only by voting power but also he can appoint his employees to the Board of Directors.

In light of the combination of factors, like the organization in Revenue Ruling 69-280, the prima facie presumption is that this association is essentially and primarily formed and operated for the individual business or personal benefit of their members, and the developer, and as such does not qualify for exemption.

Under certain circumstances an organization of this type may overcome the presumption and qualify for exemption under section 501(c)(4) of the Code. However, the concept of social welfare implies a service or program directed at benefiting the community rather than a private group or individuals. Like the organization described in Revenue Ruling 74-17, you are providing services to your members that they would otherwise have to provide for themselves. You are a private cooperative enterprise for the economic benefit and convenience of your members. Any benefits to the community through your operation of an office park project are not sufficient to meet the requirements of these regulations that you will be operated primarily for the common good and general welfare of the people of the community.

Accordingly, it is held that you are not entitled to exemption from Federal income tax under section 501(c)(4) of the Code, and you are required to file income tax returns.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

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

Sincerely yours,


District Director

Enclosures:
Form 6018
Publication 892