

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508 - RM 7008
Cincinnati, OH 45201

Date: [REDACTED]

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:

[REDACTED] Phone

[REDACTED] FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If we do not hear from you within the time specified, this will become our final determination.

Sincerely,

[REDACTED]

Director, Exempt Organizations
Rulings and Agreements

Enclosures: 3

ENCLOSURE I

Reasons For Denial of Exempt Status

[REDACTED]

Issues

Does the applicant, who was organized as a nonprofit mutual benefit corporation to provide administration and management of real property as a condominium project consisting of a public parking structure and retail space under a Declaration of Covenants, Conditions and Restrictions, qualify for exemption under section 501(c)(4) of the IRC?

Would private benefits afforded the businesses in this condominium project outweigh the public benefit thereby disqualifying the applicant for exemption under section 501(c)(4) of the IRC?

Facts

Information submitted with your application indicates that you were organized in the State of [REDACTED] on [REDACTED] as a nonprofit mutual benefit corporation. The Articles of Incorporation state that "the specific purposes for which this corporation is formed are to provide for management, administration, maintenance, preservation, and architectural control of the units and common area within a certain tract of property situated in the City of [REDACTED], County of [REDACTED], and to promote the health, safety, and welfare of all the owners of the property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose, all according to that certain Enabling Declaration Establishing a Plan for Condominium Ownership, hereinafter called the "Declaration", recorded or to be recorded with respect to said property in the Office of the Recorder of [REDACTED] County".

It states in Article III Section 1 of the Bylaws that:

"every person or entity who is an owner of a condominium shall be a member as provided in the Declaration. The provisions of these Bylaws, which are binding upon all members, are not exclusive, and members shall all be subject to the terms and provisions of the Articles, Declaration, and Association Rules. Ownership of the fee interest in a condominium shall be the sole qualifications for being a member".

Section 2 of Article III of the Bylaws states that "membership shall automatically terminate when a member sells, assigns or transfers his interest in a condominium". Section 3 of Article III of the Bylaws states that "membership shall not be transferred, pledged or alienated in any way except upon the sale, transfer or assignment of the condominium and then only to the purchaser/assignee of such condominium". Section 4 of Article III of the Bylaws states that "each owner shall be entitled to one vote for each condominium in which he holds the interest required for membership pursuant to the Declaration". Section 6 of Article III of the Bylaws states that "a member may own more than one membership by complying with the qualifications of membership as to more than one condominium". Section 7 of Article III of the Bylaws states that "the vote for each condominium shall be cast as a unit and fractional votes shall not be allowed". Section 8 of Article III of the Bylaws states that "members will be jointly, severally, liable for the payment of such assessments as may, from time to time, be fixed and levied by the Board pursuant to the provisions of the Declaration and these Bylaws". Section 9 of Article III of the Bylaws states that "should any member fail to pay his assessments prior to delinquency, the Association, in the sole discretion of the Board, shall have the right to enforce payment of such delinquent assessment pursuant to the provisions of the Declaration".

Section 10 of Article III of the Bylaws states that:

"The following provision shall govern the promulgation of the Association Rules authorized by the Declaration which shall include the establishment of a system of fines and penalties:

- (a) The Board, in its sole discretion, shall recommend to the members such rules and regulations as it deems consistent with and in furtherance of existing law, the Declaration, the Articles and these Bylaws. Upon the vote or written consent of the majority of the voting power of the membership, such rules and regulations shall take effect and constitute the Association Rules.
- (b) The Board, in its sole discretion, shall recommend to the members a list of specific fines and penalties for the violation of the provisions of the Declaration, the Articles, these Bylaws and the Association Rules by any member. Upon the vote or written consent of the majority of the voting power of the members, such fines and penalties shall be binding upon all members and shall thereafter be enforceable by the Board as a special assessment. Such a remedy shall not be deemed to be exclusive and the Board shall have such other

[REDACTED]

remedies as are provided for by applicable law, the Declaration, the Articles, the Bylaws and the Association Rules.

- (c) Any Association Rules promulgated pursuant to this section shall provide that no fine or penalty shall be levied without the following procedural safeguards:
- (i) A written statement of the alleged violations shall be provided to any member against whom such charges are brought, and such written statement shall provide a date upon which such charges shall be heard;
 - (ii) No proceedings under this subsection shall be brought against any member unless such member shall have received a written statement of such charges at least thirty (30) days prior to such hearing;
 - (iii) No proceeding shall be brought against any member more than sixty (60) days after such member is provided a written statement of such charges;
 - (iv) The Board shall appoint a panel of three (3) persons who need not be members, one of whom shall be designated as chairman who shall hear the charges and evaluate the evidence of the alleged violations;
 - (v) At such hearing the member so charged shall have the right to present oral and written evidence and to confront and cross examine adverse witnesses;
 - (vi) The panel shall deliver to the member so charged within seven (7) days after the hearing a written decision specifying any fines or penalties levied and the reasons therefore.
- (d) In the event the member shall correct an alleged violation prior to the hearing date, the Board shall discontinue the proceedings.

In an affidavit in support of this application for exempt status, [REDACTED], individually, and [REDACTED], on behalf of the City of [REDACTED] declared as follows:

"[REDACTED] was incorporated on [REDACTED] under corporation number [REDACTED] as a nonprofit, mutual benefit corporation

[REDACTED]
 pursuant to duly authorized resolution of the City Council of [REDACTED] to create an entity to manage the commonly owned real property located at [REDACTED], [REDACTED] (hereinafter the "Property"). The Property consists of various retail and office space and a parking structure. The retail and office buildings are owned by [REDACTED] and the parking structure is owned by the City of [REDACTED], which are all part of a single building structure, which includes "common areas" for elevators, stairs and walkways. [REDACTED] was formed for the purpose of creating a management entity for the common areas and to pay the expenses associated with the same. The shares of stock in [REDACTED] are owned [REDACTED] % by the City of [REDACTED] and [REDACTED] % by [REDACTED], individually. At the time Main was incorporated in [REDACTED], the City of [REDACTED] retained the law firm of [REDACTED] at [REDACTED], to prepare the articles of incorporation, bylaws, minutes and other documents necessary to incorporate [REDACTED] and to process any other applications and/or documents to complete the formation of [REDACTED] as a nonprofit, mutual benefit corporation. After the initial incorporation of [REDACTED], it was presumed that said law firm had properly processed and obtained the appropriate certificates, clearances and/or other appropriate designation of [REDACTED] as a nonprofit, mutual benefit corporation. Thereafter, [REDACTED] was conducted as a nonprofit corporation and did not file any state or federal income tax returns since its inception. In [REDACTED], as part of a contract negotiation with a cellular phone company as a potential lessee, that company inquired of the Secretary of State of [REDACTED] as to the corporate status of [REDACTED], and it was discovered for the first time that the corporate charter of [REDACTED] had been suspended in [REDACTED] for failure to file a state income tax return. Upon said discovery, [REDACTED] prepared and filed all of its tax returns for the years [REDACTED], paid taxes for those years in the amount of \$[REDACTED] and obtained a certificate of revivor placing the corporation in good standing as of [REDACTED]. [REDACTED] filed an application for exempt status with the [REDACTED] of the [REDACTED] on [REDACTED], and a determination of exempt status by the State of [REDACTED] is dependent upon a similar determination by the IRS. If the application for exempt status is granted, the taxes paid to revive the corporation will be refunded and returned to [REDACTED]. The undersigned principals of [REDACTED] are requesting a determination as to the exempt status of [REDACTED] as a nonprofit, mutual benefit corporation to be granted from the IRS retroactive to the date of its original incorporation in [REDACTED]. Main is presently filing its application for exempt status with the IRS because it just discovered that the initial legal work to be performed by [REDACTED] to incorporate Main and obtain an initial determination of exempt status in [REDACTED] was not

[REDACTED]

performed as a result of their oversight, neglect and/or inadvertence".

The following was stated in your activities:

"Although organized as a mutual benefit corporation and operating like a condominium, the entity promotes the common good of the entire community. Located near the [REDACTED] this building is in a section of the city that provides recreational and entertainment activities to the general public. Tourism is a vital part of the economy, as over eleven million visitors come to the city during the summer, on weekends and for special events. Unit A of the building provides parking to the general public. Unit B is occupied by five restaurants and fifteen retail businesses. The common area is used by the general public. The corporation also receives incidental income from allowing a cellular telephone company to place communication equipment in the common area. This income is used to offset common area expenses.

In the Declaration of Covenants, Conditions and Restrictions for [REDACTED], the following is stated:

"This Declaration is made this [REDACTED] by The [REDACTED] of the [REDACTED], hereinafter referred to as "Declarant". Declarant deems it desirable to impose a general plan for the improvement, development and maintenance of the Property as a condominium project consisting of a public parking structure and retail space, and to adopt and establish covenants, conditions and restrictions upon the Property for the purpose of enforcing and protecting the value, desirability and attractiveness thereof. Condominium shall mean an estate in real property as defined in [REDACTED] Civil Code Section [REDACTED] and shall consist of a [REDACTED] percent [REDACTED]%) undivided interest in the common area owned in common with the other owner, coupled with a separate interest in space called a unit, the boundaries of which are described on the condominium plan for the project".

You stated in your response dated [REDACTED] that "the redevelopment strategy was to increase business and provide parking by designing multi use structures that would accommodate larger business establishments and provide centralized public parking". You stated that "the redevelopment agency approved this project with the idea of providing benefits to the public and that the public parking structure is an integral part of this building". Also, you stated in your response that "this area is one of the most heavily visited beach areas on the [REDACTED] [REDACTED]".

[REDACTED]

In your response dated [REDACTED] you stated the following:

"The nature of condominium ownership is that while certain rights and obligations are assigned on a per unit basis others are assigned based on square footage. In this instance the City of Huntington Beach has a contractual obligation to pay [REDACTED] percent of the maintenance of common areas based on common area usage and square footage. From inception expenses have been paid under this percentage to reflect the correct percentage of public interest. This is the only project of this nature in this district. The other multi use developments (public parking/business) in the redevelopment zone are entirely private interests. These other properties are required by local zoning laws to provide adequate parking for the businesses in those structures. [REDACTED] is the only venture in which the city (public interest) participates. The parking requirement for the businesses in the [REDACTED] as per the local zoning is 153 parking spaces. There are a total of 832 parking spaces in this project. Only [REDACTED] percent of this structure would be required to comply with the parking needs of the businesses in this building. The percentage of public parking that is available for public beach access is well above the [REDACTED] percent requirement to be considered of primarily public benefit. This parking structure is across the highway from not only the beach but the municipal pier. People come to [REDACTED] beaches irrespective of the poor parking in congested areas. Congested beach areas along this four lane highway that have inadequate parking are hazardous to both vehicle and pedestrian traffic. Operating a public parking facility in this area is a matter of providing public safety and access to the public beachfront. The majority participation by the City of [REDACTED] in the maintenance of this project is a clear indicator that this is primarily a public benefit".

In a "Request for City Council Action" dated [REDACTED] it was determined that the City of [REDACTED] has an [REDACTED] percent interest and [REDACTED] has a [REDACTED] percent interest in the Association and that [REDACTED] is responsible for [REDACTED] percent of the operating budget and the City is responsible for [REDACTED] percent of the budget.

You indicated in your response dated [REDACTED] the reason for why part of the facility was retail if the driving need was public parking was that, based on urban design criteria for redevelopment in communities, the goal was to face a strip of retail onto [REDACTED] to provide a shield for the public parking. You stated "this was done for aesthetics as we tried to create a certain ambience for the downtown area". You continued to state:

[REDACTED]

"This structure directly enhances the accessibility of the downtown area. The primary function is to provide parking for the general public who frequent the downtown area, as well as the beach, pier, and [REDACTED]. The city beach and pier are a mere block away from the parking structure. [REDACTED] is a visitor-serving, grassy amphitheatre adjacent to the municipal pier. These beach facilities attract nine million visitors annually. In reality, the businesses do derive a benefit from having the parking structure downtown. As a public entity, the city considers this a benefit, but one that services the public first, then businesses. The businesses, through sales and property taxes, also support city government, which in turn provides services to the general public".

In your response dated [REDACTED] you stated the following:

"I think that it would be helpful if we could validate the fact that only a portion of the parking structure's users are there to buy goods and services from the local merchants. In [REDACTED] total autos parked in the [REDACTED] were [REDACTED]. Of that number, only [REDACTED] used the merchants' parking validation system. This is only 35 percent of the overall usage within the structure. The parking validation system allows the user to park at a significantly reduced rate; therefore, the general public would utilize them if they were going into the businesses".

In your response dated [REDACTED] you stated the following:

"The redevelopment agency was in a position similar to the organizers of the [REDACTED]. Like many older cities, [REDACTED] was faced with impending decay of the center-city neighborhoods rendered uncomfortable by narrow streets, increasing vehicular traffic, and a lack of public parking. The [REDACTED] case also states that both the City of [REDACTED] and the organizers (private business owners) benefited. However, since there were benefits to the community as a whole, exempt status was granted. The attached [REDACTED] case also states "nor under either subsection is the simple conduct of business fatal to the exemption. What is crucial is the manner of such conduct". Our position is that this agreement provides for maintenance of property which is primarily of public benefit and that exemption should be granted".

In your response dated [REDACTED] you stated the following:

"The [REDACTED] is not set up in the same manner as the [REDACTED] facility. A municipality built the [REDACTED] and a municipality formed a partnership with a single businessman

because of the retail element within the overall facility. The fact of the matter is that the relationship is [REDACTED] percent city and [REDACTED] percent privately owned. This relationship was set up because it is entirely one structure, parking facility and business portion. With regard to profit, the funds generated by the parking structure cover debt service and maintenance and operation of the structure, nothing else. The private business involved in the retail portion receives no funds generated from the parking structure. Therefore, the funding terms are not "a great private benefit to the business side of the association". The primary benefactor is the general public who is able to utilize the parking structure to come to the beach and the businesses downtown. Any other arrangement would be a gift of public taxpayer's funds and would not be permitted".

The sources of income indicated in your application consist of assessments from Units A & B and income from a cellular telephone company. In fiscal year [REDACTED] your total income of \$ [REDACTED] included \$ [REDACTED] in assessments from [REDACTED] representing Unit B, \$ [REDACTED] in assessments from the City of [REDACTED] representing Unit A, and \$ [REDACTED] in income from [REDACTED] for allowing [REDACTED] to have an emergency back-up generator in the common area.

The expenses indicated in your application include maintenance/repairs to the sprinkler system, the elevator and the building, utilities, plumbing, painting, security and fire alarm services, landscape maintenance and legal fees.

Law

Section 501(c) (4) (A) of the Internal Revenue Code exempts from income tax civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Reg. 1.501(c) (4) -1 Civic organizations and local associations of employees.

(a) Civic organizations--(1) In general. A civic league or organization may be exempt as an organization described in section 501(c) (4) if--

- [REDACTED]
- (i) It is not organized or operated for profit; and
 - (ii) It is operated exclusively for the promotion of social welfare.

(2) Promotion of social welfare--(i) In general. 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. A social welfare organization will qualify for exemption as a charitable organization if it falls within the definition of charitable set forth in paragraph (d) (2) of § 1.501(c) (3)-1 and is not an action organization as set forth in paragraph (c) (3) of § 1.501(c) (3)-1.

(ii) Political or social activities. 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. See, however, section 501(c) (6) and § 1.501(c) (6)-1, relating to business leagues and similar organizations. A social welfare organization that is not, at any time after October 4, 1976, exempt from taxation as an organization described in section 501(c) (3) may qualify under section 501(c) (4) even though it is an action organization described in § 1.501(c) (3)-1(c) (3) (ii) or (iv), if it otherwise qualifies under this section. For rules relating to an organization that is, after October 4, 1976, exempt from taxation as an organization described in section 501(c) (3), see section 504 and § 1.504-1.

(b) Local associations of employees. Local associations of employees described in section 501(c) (4) are expressly entitled to exemption under section 501(a). As conditions to exemption, it is required (1) that the membership of such an association be limited to the employees of a designated person or persons in a particular municipality, and (2) that the net earnings of the association be devoted exclusively to charitable, educational, or recreational purposes. The word local is defined in paragraph (b) of § 1.501(c) (12)-1. See paragraph (d) (2) and (3) of § 1.501(c) (3)-1 with reference to the meaning of charitable and educational as used in this section.

In Rev Rul 74-17, 1974-1 C.B. 130 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

[REDACTED]

paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code. The organization is an association that was formed by the unit owners of a condominium housing project and is operated to provide for the management, maintenance, and care of the common areas of the project. Its income is from membership assessments and its disbursements are for normal operating expenses. By virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association 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 owner's 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. Since the organization's activities are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare. Accordingly, it does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.

In Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962), the court held that a cooperative housing corporation was not exempt as a social welfare organization under section 501(c)(4) of the Code since its activities were of the nature of an economic and private cooperative undertaking. Lake Forest, Inc. purchased two United States defense housing projects and proposed to devote these properties to a cooperative, nonprofit use as homes for its members. The court found Lake Forest, Inc. is not "civic", but simply a private cooperative organization; its operation is not a work of "social welfare" but a private economic enterprise albeit in the interest of some of the citizens; and even if its objects include a contribution of social welfare, that is not its aim "exclusively". Classification as "civic" or "social" depends upon the character-- as public or private-- of the benefits bestowed, of the beneficiary, and of the benefactor. "Civic" pretensions and considerations of "social welfare" aside, plainly other substantial realizations motivated and are envisioned by the corporation. Membership affords an instrument whereby an individual can save for a home-- in the project or elsewhere-- or satisfy other material ambitions, his net equity in the corporation being both redeemable and salable. In achieving this end economies are made possible, through the use of the corporation, which are not available to individuals-- equally thrifty and worthy-- acting alone. These are advantages wholly proper but nonetheless private gain. The court decided that the organization and operation of Lake Forest, Inc. are not "exclusively for the promotion of

[REDACTED]

social welfare", since they partake largely of the nature of an economic and private cooperative undertaking.

In Rev. Rul. 78-86, 1978-1 C.B. 151 the Service will not follow the Monterey Public Parking Corporation decision that an organization formed by merchants to establish and operate a public off-street parking facility that provides free or reduced-rate parking for the merchants' customers through a validation stamp system qualifies for exemption as either a charitable corporation under section 501(c)(3) of the Code or a social welfare organization under section 501(c)(4). The Corporation was formed by a group of local merchants to establish and operate a public off-street parking facility in order to alleviate a lack of parking space in the central business district of Monterey. Anyone could park a car at this facility for 25 cents per hour. However, in order to provide their customers with free parking while they shopped, the participating merchants set up a validation stamp system. Under this system, customers could present their parking vouchers to participating merchants and obtain parking stamps instead of paying cash for parking. The stamps were sold to merchants in books of 100 at \$18 per book. Since each stamp permitted one hour of parking, merchants were in effect paying 18 cents for each hour of free parking they extended to their customers. Section 1.501(c)(4)-1 of the regulations provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit. A parking arrangement whereby merchants join together to provide parking for their customers at a reduced rate serves the merchants' private interests by encouraging the public to patronize their stores. Rather than providing their own parking, merchants are able to join together to provide a common parking facility in which all share the benefits. Thus, although there may well be some public benefit derived from the construction and operation of the parking lot, it cannot be said to be operated primarily for social welfare purposes under section 501(c)(4).

In Rev. Rul. 64-108, 1964-1 C.B. 189 an organization, whose primary activity is the operation of a parking stamp plan, whereby the patrons of the organization's members are afforded automobile parking privileges while shopping at members' stores, is not entitled to exemption from Federal income tax as an organization described in section 501(c)(6) of the Code. The purpose of the organization, as set forth in its articles of incorporation, is to facilitate the parking of motor vehicles in the city of M. The corporation, whose membership consists mainly of merchants operating stores in the shopping district of the city, was formed to establish a park and shop plan in order to

encourage shoppers to patronize the merchants who belong to the organization. Under the plan, the corporation sells books of parking stamps to its members for a stated price plus a small additional fee for advertising purposes. The stores issue the stamps to their customers on the basis of the amount of purchases. The stamps are turned in by the customers at the participating automobile parking lot in lieu of a parking fee. The corporation redeems the stamps turned in to the parking lot operators from the corporation's redemption fund. A shopper who uses the facilities of a participating parking lot, but who either fails to patronize a member store or whose purchases at a member store are in an amount too small to entitle him to a parking stamp is required to pay the regular parking fee. The operation of a parking stamp plan, as described above, is an activity directed at promoting the businesses of the organization's individual members in their individual capacities and, as such, is the performance of a particular service for such members rather than an activity directed to the improvement of business conditions generally, as required by the applicable regulations.

In Rev. Rul. 80-107, 1980-1 C.B. 117 an organization of individuals and institutions, having beneficial interests in shares of any public utility located in the state, that was formed to promote the interests of the public utility industry and its stockholders by preparing and filing statements relating to public utility matter pending before state and federal agencies and legislative bodies and by publishing a newsletter about matter affecting the stockholders does not qualify for exemption under section 501(c)(4) of the Code. The organization's purposes are the expansion of industry, the creation of employment, the increase of scientific knowledge, and the support of economic growth through the advancement of the interests of persons who invest in public utility stocks. The organization prepares and files, on behalf of the public utility companies in which its members own shares, statements relating to rate and regulatory matters pending before the state public utilities commission and other state and federal regulatory agencies and legislative bodies. The organization also distributes among its members a newsletter concerning specific matters affecting public utility shareholders. An organization that is operated essentially for the private benefit of its members is not primarily engaged in activities for the common good and general welfare of the people of the community. In this case, the primary beneficiaries of the organization's activities are its members, together with other individuals who own shares in the public utility companies of the state. Therefore, the organization is primarily operated to serve private interests rather than the interests of the community as a whole.

[REDACTED]

In Rev. Rul. 73-306, 1973-2 C.B. 179 a nonprofit organization formed to represent member-tenants of an apartment complex in negotiations with landlords, in litigation, and before local and Federal regulatory agencies with respect to matters of mutual concern to the tenants does not qualify for exemption under section 501(c)(4) of the Code. The organization was formed as a nonprofit corporation to promote the common interest of tenants who reside in an apartment complex. Any person regularly living in the complex is eligible for membership. The organization represents its member-tenants in negotiations with the management of the complex in order to secure better maintenance and services, and to secure reasonable rentals. The organization also provides legal representation for members as a group in litigation and before local and Federal regulatory agencies involving matters of mutual concern to the members as tenants. The concept of social welfare implies a service or program directed at benefiting the community rather than a private group of individuals. The organization in this case is operated essentially for the private benefit of its members. Thus, it is not primarily engaged in activities for the common good and general welfare of the people of the community. Accordingly, this organization does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.

In Rev. Rul. 73-349, 1973-2 C.B. 179 an organization formed to purchase groceries for its membership at the lowest possible prices on a cooperative basis is not exempt from tax as a social welfare organization under section 501(c)(4) of the Code. The organization was formed for the purpose of purchasing groceries for its membership at the lowest possible prices. It receives orders from its members, consolidates them, and purchases the food in quantity. Each member pays for the cost of his food. In addition, each member is assessed an equal monthly service charge by the governing board of trustees for the monthly operating costs of the organization. Membership is open to all individuals in a particular community. The organization here described is a private cooperative enterprise for the economic benefit or convenience of the members. Similarly, in this case the organization is operated primarily for the private benefit of members and any benefits to the community are not sufficient to meet the requirement of the regulations that the organization be operated primarily for the common good and general welfare of the people of the community. Accordingly, this organization is not exempt from Federal income tax as a social welfare organization under section 501(c)(4) of the Code.

In Contracting Plumbers Coop. Restor. Corp. v. United States 488 F.2d 684, 33 A.F.T.R.2d 74-403, 74-1 the Court of Appeals, J.

[REDACTED]

Joseph Smith, Circuit Judge, held that a private, nonprofit cooperative, which was organized by New York City plumbers to effect repairs of "cuts" made in city streets by members in the course of plumbing activities, was not entitled to exemption as a civic organization or business league since, among other things, each member enjoyed economic benefits precisely to the extent that he used and paid for restoration services. The presence of a single substantial non-exempt purpose precludes exempt status regardless of the number or importance of the exempt purposes. The court found that the taxpayer provided substantial and different benefits to both the public and its private members, and that it cannot be said that it is "primarily" devoted to the common good as required by even the most liberal reading of section 501(c)(4).

In Monterey Public Parking Corp. v. U. S., 321 F.Supp. 972, 27 A.F.T.R. 2d 71-378 the District Court held that where nonprofit California corporation was formed to construct and operate public off-street parking facility in central business district of city, no profits or advertising advantages accrued to corporation's organizers that did not also accrue to nonorganizers, all future profits were to be given over to city, upon dissolution remaining assets were to be distributed to nonprofit fund or foundation organized for charitable purposes and there was no indication of unreasonably accumulated surpluses, corporation qualified for exemption from income taxes both as charitable corporation and as social welfare organization. The City of Monterey was the primary beneficiary when plaintiff succeeded in constructing public parking facilities without any significant outlay of public funds. Plaintiff's organizers were also undeniably benefited. But this benefit is indistinguishable from that which inhered to the community as a whole. Their profits may have been enhanced or maintained as customers continued to shop in the downtown area, but this observation applies equally to the profits of all downtown businessmen, to the property values of all property owners there, and to the value of the tax base of the entire City of Monterey. The validation stamp system is available to all persons and businesses, not just to the organizers. No profits, direct or indirect, and no advertising advantages have accrued to plaintiff's organizers which have not also accrued to non-organizers. The Court therefore finds that the benefits to plaintiff's organizers do not constitute a substantial non-exempt purpose under either 501(c)(3) or 501(c)(4) of the Code.

Application of Law

[REDACTED] is like the organization in Rev Rul 74-17 that was denied exemption under section 501(c)(4) of the Code. The

[REDACTED]

organization is an association that was formed by the unit owners of a condominium housing project and is operated to provide for the management, maintenance, and care of the common areas of the project. By virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association 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 owner's 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. [REDACTED] was formed for the purpose of creating a management entity for the common areas and to pay the expenses associated with the same. The [REDACTED] of [REDACTED] imposed a plan for the improvement, development and maintenance of the Property as a condominium project consisting of a public parking structure and retail space, and to adopt and establish covenants, conditions and restrictions upon the Property for the purpose of enforcing and protecting the value, desirability and attractiveness thereof.

[REDACTED] is like the organization in Rev Rul 78-86 whose decision the Service will not follow. The Monterey Public Parking Corporation decision was that an organization formed by merchants to establish and operate a public off-street parking facility that provides free or reduced-rate parking for the merchants' customers through a validation stamp system qualifies for exemption as either a charitable corporation under section 501(c)(3) of the Code or a social welfare organization under section 501(c)(4). A parking arrangement whereby merchants join together to provide parking for their customers at a reduced rate serves the merchants' private interests by encouraging the public to patronize their stores. Main Promenade Inc uses a parking validation system that allows the user to park at a significantly reduced rate.

Main Promenade Inc is like the organization in Rev Rul 64-108 that was denied exemption under section 501(c)(6) of the Code. The primary activity of the organization is the operation of a parking stamp plan, whereby the patrons of the organization's members are afforded automobile parking privileges while shopping at members' stores. The operation of the parking stamp plan is an activity directed at promoting the businesses of the organization's individual members in their individual capacities and, as such, is the performance of a particular service for such members rather than an activity directed to the improvement of business conditions generally. As stated above, Main Promenade

[REDACTED]

Inc uses a parking validation system that allows the user to park at a significantly reduced rate. Even though this revenue ruling concerns section 501(c)(6), the reasoning equally applies to section 501(c)(4) where [REDACTED] would not be operated primarily for social welfare purposes.

[REDACTED] is like the organization in Rev Rul 80-107 that was denied exemption under section 501(c)(4) of the Code. The organization consisted of individuals and institutions, having beneficial interests in shares of any public utility located in the state, that was formed to promote the interests of the public utility industry and its stockholders by preparing and filing statements relating to public utility matter pending before state and federal agencies and legislative bodies and by publishing a newsletter about matter affecting the stockholders. An organization that is operated essentially for the private benefit of its members is not primarily engaged in activities for the common good and general welfare of the people of the community. The primary beneficiaries of the organization's activities are its members, together with other individuals who own shares in the public utility companies of the state. The businesses located in the [REDACTED] facility benefited from their location, the terms of the agreement, and the condominium structure of the arrangement.

[REDACTED] is like the organization in Rev Rul 73-306 that was denied exemption under section 501(c)(4) of the Code. The organization was formed to represent member-tenants of an apartment complex in negotiations with landlords, in litigation, and before local and Federal regulatory agencies with respect to matters of mutual concern to the tenants. The organization in this case is operated essentially for the private benefit of its members. [REDACTED] is not only operated for the benefit of the public with regards to public parking, but also for the promotion of the businesses that reside there.

[REDACTED] is like the organization in Rev Rul 73-349 that was denied exemption as a social welfare organization under section 501(c)(4) of the Code. The organization was formed to purchase groceries for its membership at the lowest possible prices on a cooperative basis. The organization here described is a private cooperative enterprise for the economic benefit or convenience of the members. The businesses in the [REDACTED] facility benefit from the financial terms of the arrangement.

In Commissioner v. Lake Forest, Inc., the court held that a cooperative housing corporation was not exempt as a social welfare organization under section 501(c)(4) of the Code since its activities were of the nature of an economic and private cooperative undertaking. Lake Forest, Inc. purchased two United

[REDACTED]

States defense housing projects and proposed to devote these properties to a cooperative, nonprofit use as homes for its members. The members benefited from the financial terms and buy and sell arrangements that they would not be able to obtain on their own. [REDACTED] was formed as a condominium project to provide public parking and to promote businesses that were located there. The businesses are able to benefit from the location and the organizational structure.

In Contracting Plumbers Coop. Restor. Corp. v. United States, a private, nonprofit cooperative, which was organized by New York City plumbers to effect repairs of "cuts" made in city streets by members in the course of plumbing activities, was not entitled to exemption as a civic organization or business league since, among other things, each member enjoyed economic benefits precisely to the extent that he used and paid for restoration services. In the case of [REDACTED], the businesses enjoyed the economic benefits of the condominium terms and arrangement and the added business from the location of the facility.

In Monterey Public Parking Corp. v. U. S., the District Court held that where nonprofit California corporation was formed to construct and operate public off-street parking facility in central business district of city, no profits or advertising advantages accrued to corporation's organizers that did not also accrue to nonorganizers, all future profits were to be given over to city, upon dissolution remaining assets were to be distributed to nonprofit fund or foundation organized for charitable purposes and there was no indication of unreasonably accumulated surpluses, corporation qualified for exemption from income taxes both as charitable corporation and as social welfare organization. Plaintiff's organizers were also undeniably benefited. But this benefit is indistinguishable from that which inhered to the community as a whole. The profits of all downtown businessmen, the property values of all property owners there, and the value of the tax base of the entire City of Monterey were enhanced. The validation stamp system is available to all persons and businesses, not just to the organizers. This scenario does not apply to the [REDACTED] situation. In your situation the profits do not apply equally to all businesses in the community, only to the businesses in the parking structure. It is not affecting the property values of all property owners in the community, only to the property values of the businesses located in the parking structure. The private benefits accruing in this case are substantial and only apply to the businesses located in the parking facility. The parking validation system is used for the businesses that are located in the facility.

[REDACTED]

Applicant's Position

Applicant states the following in a response dated [REDACTED]

"We feel that Rev Rul 74-17 does not apply in this situation. That ruling pertains to an organization that is formed for the private benefit of its members. The property in this instance is used by and for the benefit of the public".

Applicant states the following in a response dated [REDACTED]:

"The redevelopment agency was in a position similar to the organizers of the Monterey Public Parking Corp. The Monterey case states that both the City of Monterey and the organizers (private business owners) benefited. However, since there were ~~benefits to the community as a whole~~, exempt status was granted. The Monterey case also states "nor under either subsection is the simple conduct of business fatal to the exemption. What is crucial is the manner of such conduct". Our position is that this agreement provides for maintenance of property which is primarily of public benefit and that an exemption should be granted".

Applicant states the following in a response dated [REDACTED]

"The [REDACTED] is not set up in the same manner as the Monterey facility. A municipality built the [REDACTED] and a municipality formed a partnership with a single businessman because of the retail element within the overall facility. The fact of the matter is that the relationship is [REDACTED] percent city and [REDACTED] percent privately owned. This relationship was set up because it is entirely one structure, parking facility and business portion. The general public utilizes the city's parking structure when they come to the beach and downtown. The fact of the matter is that the service we provide in the city's parking structure is provided to the general public, not just a select few businesses. With regard to profit, the funds generated by the parking structure cover debt service and maintenance and operation of the structure, nothing else. The private business involved in the retail portion receives no funds generated from the parking structure. Therefore, the funding terms are not "a great private benefit to the business side of the association". The primary benefactor is the general public who is able to utilize the parking structure to come to the beach and the businesses downtown. Any other arrangement would be a gift of public taxpayer's funds and would not be permitted. Therefore, because the [REDACTED] condominium association was not created by private businessmen, but by the City of [REDACTED]

[REDACTED]; the vast majority of the partnership ([REDACTED] percent) belongs to the city; there is no profit derived from the parking structure; and, the parking structure was built to serve the general public to visit not only the downtown, but also the beach, the city should qualify for the tax exemption".

Service Response to Applicant's Position

Applicant states that Rev Rul 74-17 does not apply in their situation. However, the organization in Rev Rul 74-17 is set up by the unit owners of a condominium housing project and [REDACTED] was formed as a condominium project. The state statute that defines a condominium in both cases is the same. The purposes, operations, funding and expenditures of the organizations are basically the same. In this case, Rev Rul 74-17 would apply.

Applicant states that their situation is similar to that of the organization in the Monterey case and that, since the community as a whole benefited in the Monterey case and were granted exemption that they should be granted exemption also. In the [REDACTED] case, the community benefits from the public parking but not to the extent that the businesses located in the parking facility benefit. The Service does not follow the decision in the Monterey case and the [REDACTED] businesses were operating a stamp validation system.

In an affidavit signed by the applicant in support of application for exempt status, applicant states that "shares of stock in [REDACTED] are owned [REDACTED]% by the City of [REDACTED] and [REDACTED]% by [REDACTED], individually. The [REDACTED] percent city and [REDACTED] percent privately owned relationship are the terms of payment of maintenance costs of the common area. With regard to the funding terms, private benefit in relation to the businesses in this case is not having to pay [REDACTED]% of the maintenance costs of the common area. An organization will not necessarily qualify for exemption from tax merely because it is eligible for assistance from, or participates in, a governmental program such as the redevelopment plan. In some instances these programs provide assistance to organizations that are not described in any of the exempting provisions of the Code, such as businesses for profit.

Conclusion

[REDACTED] is operated as a condominium project consisting of a public parking structure and retail space. Condominium ownership necessarily involves ownership in common by all condominium unit owners of a great many so-called common

[REDACTED]

areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners. The businesses located in the retail space benefit greatly from increased foot traffic and the financial terms of the agreement. The businesses operate a stamp validation system whereby users get reduced parking rates. Based on the operation of the organization as a condominium project, the private benefits afforded the businesses in the facility and the use of a stamp validation system, [REDACTED] does not qualify for exemption under section 501(c)(4) of the Code.