

Internal Revenue Service

Department of the Treasury

District
Director

P.O. Box 1680, GPO Brooklyn, N.Y. 11202

Date: DEC 24 1986

Person to Contact:
[REDACTED]

Contact Telephone Number:
[REDACTED]

Refer Reply to:
[REDACTED]

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The purposes in your Certificate of Incorporation state that you will acquire and preserve [REDACTED] acres on [REDACTED] Road, [REDACTED], [REDACTED] known as the [REDACTED]; maintain an open sanctuary for people to come in times of need, whether spiritual, emotional, or physical. To provide personal and creative growth experiences through judicious use of the natural state, and by the use of workshops, seminars, physical expression and exercise, and other means to assist in the full development of the human potential in harmony with nature; and to promote individual and group retreats in furtherance of these goals, to be open to the public.

The information submitted indicates that your activities will consist of retreats, especially in the summer. The use of [REDACTED] small cabins is reserved for this, and camping is also allowed. There is often a work exchange program allowed (depending on individuals' circumstances, or the cost is minimal \$[REDACTED] to \$[REDACTED] per month rental cabins, plus maintenance fee or work exchange). You are currently building one more cabin for public use. You have [REDACTED] cabins available for workshops.

You have [REDACTED] residential structures under a [REDACTED] year lease contract. The [REDACTED] year lease agreement is only available to shareholders, a shareholder being a person who purchases a share in the [REDACTED]. One share entitles the shareholders to membership in the Shareholders Association and one vote in all decisions made. One share guarantees the shareholder the right to lease one residential structure or one building site, and the right to live there. No new structure may be built within 100 feet of a residence, unless the shareholder in that residence approves. The land is held in common by all shareholders.

A share in the [REDACTED] costs \$ [REDACTED]. The proceeds from the sale of shares were used to purchase the [REDACTED] acres of land or to maintain them. Rental fees and maintenance fees for the cabins and residual structure are the same for shareholder and the general public. The maintenance fee cost \$ [REDACTED] per month.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

The overlapping relationship between IRC 501(c)(3) and IRC 501(c)(4) is that social welfare organizations qualifying under the former may be recognized as exempt under IRC 501(c)(3), while those social welfare organization which cannot so qualify because they are "action" organizations or because they do not meet the definition of "charitable" contained in the regulations, can gain exemption under IRC 501(c)(4), provided they meet all the requirements of that provision.

In Revenue Ruling 74-17, 1974-1, C.B. 130, 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. The income is from membership assessments and its disbursements are for normal operating expenses. 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 understanding.

Revenue Ruling 65-201, 1965-1 C.B. 170, holds that a cooperative organization operating and maintaining a housing development and providing housing facilities does not qualify for exemption from Federal income tax under section 501(c)(12), or any other provision of the Code.

The information available demonstrates that, like the organizations described in Revenue Ruling 74-17, 65-201 and the Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (4th Cir. 1962) court case, your activities are of the nature of an economic and private cooperative which results in private benefit to its members.

You have a total of ■ members and ■ have residual^{entel} structure under a ■ year lease contract. Only members can receive a ■ year lease contract and members and the general public pay the same rental fees and maintenance fees. The members are receiving a private benefit because they pay the same rental fees as the general public and they receive the benefit of a ■ year lease contract at the low rental and maintenance fee.

In addition, the cooperative ownership involves ownership in common by all cooperative unit owners of a great many so-called common areas, the maintenance and care of which constitutes the provision of private benefits for the unit owners, which is similar to the organization mentioned in Revenue Ruling 74-17.

You do not meet the requirements for IRC 501(c)(3) because there cannot be inurement to private shareholders or individuals as stated in the Code.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination you may protest in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completions.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

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. Section 7428(b)(2) of the Internal Revenue Code provides in part that "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 administrative remedies available to it within the Internal Revenue Service."



District Director

Enclosure: Publication 892