

Internal Revenue Service
District Director

Department of the Treasury

Post Office Box 1680, GPO
Brooklyn, NY 11202

Date: SEP 19 1990

Person to Contact:
[REDACTED]

Contact Telephone Number:
[REDACTED]

Refer Reply to:
[REDACTED]

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(7) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED] under Section [REDACTED] of the Not-For-Profit Corporation Law of the State of [REDACTED].

The purposes for which the corporation was formed are as follows:

To maintain the condominium unites and common elements.

To make by-laws for the management of its property and the regulation of its property and the regulation of its affairs...

Your activities consist of the collection of assessments from Condominium owners and the payment of all expenses relative to the care and maintenance of common charges of members.

Your disbursements are expended for the cost associated with the care and maintenance of the condominium unit's common areas. Expenses include, but are not limited to, utilities, insurance landscaping, snow and trash removal.

Section 501(c)(7) of the Code provides exemption to clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder. In general, this exemption extends to social and recreation clubs which are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

Public Law 94-568 amended IRC 501 to reflect a twofold change under IRC 501(c)(7). First, it makes it clear that a social club may receive some investment income without losing its exempt status. Second, it permits a higher level of income from nonmember use of club facilities than was previously allowed.

In addition, Public Law 94-568 defines gross receipts as those receipts from normal and usual activities of a club including charges, admissions, membership fees, dues, assessments, investment income, and normal recurring capital gains on investments, but excluding initiation fees and capital contributions. Public Law 94-568 also states that it is intended that social clubs should be permitted to receive up to 35 percent of their gross receipts, including investment income, from sources outside of their membership without losing their exempt status. Within this 35 percent amount, not more than 15 percent of the gross receipts should be derived from the use of the social club's facilities or services by the general public. Thus a social club may receive investment income up to the full 35 percent amount of gross receipts. If a club receives unusual amounts of income, such as from the sale of its clubhouse or similar facility, that income is not to be included in the 35 percent formula; that is, unusual income is not to be included in the gross receipts of the club.

Revenue Ruling 66-149, 1966-1 C.B. 146 holds that a social club is not exempt from Federal income tax as an organization described in section 501(c)(7) of the Code where it regularly derives a substantial part of its income from nonmember sources such as, for example, dividends and interest on investments which it owns. However, a club's right to exemption under section 501(c)(7) of the Code is not affected by the fact that for a relatively short period a substantial part of its income is derived from investment of the proceeds of the sale of its former clubhouse pending the acquisition of a new home for the club.

Rev. Rul. 75-494 1975-2 C.B. 214 denied exemption to an organization formed by members of a housing development operated for the purpose of providing services to its membership. The organization was not operated exclusively in furtherance of pleasure and recreation. Similarly your organization provides services to the unit owners, and is not exclusively operated for social and recreational purposes as described in IRC section 501(c)(7).

We have also considered your application for recognition of exemption under Section 501(c)(4) of the Internal Revenue Code of 1954. Section 501(c)(4) of the Internal Revenue Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but exclusively for the promotion of social welfare. Section 1.501(c)(4)-1(a)(2) of the Income Tax Regulations states 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 coming within the scope of this section is one that is operated to bring about civic betterment and social improvements.

Revenue Ruling 74-99, 1974-1 C.B. 131 states that a homeowners association must, in addition to otherwise qualifying for exemption under section 501(c)(4) of the Code, satisfy the following requirements: (1) It must engage in activities that confer benefit on a community comprising a geographical unit which bears a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof; ...and (3) It owns and maintains only common areas or facilities such as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public and is not restricted to members of the homeowners association.

The concept of social welfare implies a service or program directed at benefiting the community rather than a private group of individuals. Your organization operates essentially for the private economic benefit and convenience of the unit owners by performing services that your members would otherwise have to provide for themselves. Thus, it is not primarily engaged in activities for the common good and general welfare of the people of the community. Accordingly, you do not qualify for exemption from Federal income tax under Section 501(c)(4) or any other section of the Internal Revenue Code.

Rev. Rul. 74-17 1974-1 C.B. 130 denied exemption to an organization formed by the unit owners of a Condominium housing project operated for the management, maintenance and care of common areas. 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.

Like the organization described in Re. Rul. 74-17 your organization provides a direct benefit to the unit owners, and is not formed for the social welfare of the people in the community as described in IRC section 501(c)(4).

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

We have also determined that you fail to qualify for exempt status under any other subsection of IRC 501(c).

It appears that your organization may elect to file under Section 528 to receive certain tax benefits which, in effect, permits exclusion of exempt function income from gross income. The election to file under Section 528 is to be made by filing Form 1120-H, U.S. Income Tax Return for Homeowners Associations. However, if you do not elect to file under Section 528, you are required to file Federal Income Tax returns on Form 1120.

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.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting 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 completion.

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

Sincerely yours,



District Director

Enclosure: Publication 892