

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

JUN 17 1993

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under Section 501(c)(7) of the Internal Revenue Code and have determined that you do not qualify for exemption under that Section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence presented discloses that the organization was incorporated in [REDACTED] on [REDACTED], to own real estate and to maintain the real estate for the benefit of members.

The organization's Bylaws state the purposes of the organization are:

To insure the present and future residential living conditions relating to the health, safety, convenience, comfort and beauty of lots in a development of land in [REDACTED] Township, County of [REDACTED] and [REDACTED], known as [REDACTED]; to regulate, inspect, administer, approve structures and plans for the same, and obtain compliance generally with the restrictions and conditions as to the use of all community property and amenities such as, but not limited to, buildings, roads, rights-of-way, land and access roads. In particular, it is a specific objective to maintain this DEVELOPMENT in its present unspoiled and unpolluted condition and, at the same time, to provide a habitat for wildlife, opportunities for hunting, fishing, scientific research, exercise and other family enjoyment of the outdoors.

Membership in the organization is restricted to a person or entity owning a lot in the development. Each member (lot owners) has one vote. In addition, members must abide by the covenants established by organization.

In operation the organization, a private secluded development, will maintain the private roads for the members, maintain the lake for fishing, boating and swimming by the members, and maintain the undeveloped land for hunting and other recreational purposes.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	[REDACTED]	[REDACTED]	[REDACTED]				

[REDACTED]

The primary purpose of the organization is to ensure the present and future residential living conditions relating to the safety, convenience, comfort and beauty of lots in [REDACTED] as stated in the organization's [REDACTED] letter.

Income is derived from maintenance fees, garbage fees, special assessments if needed and a court settlement.

Expenditures are for snow removal, road maintenance, garbage pickup, repairs and operational expenses.

The organization does not have a club facility where members can commingle and has no social functions.

Section 501(c)(7) of the Internal Revenue Code provides for exemption for clubs organized for pleasure, recreation, and other non-profitable purposes, substantially all the activities of which are for such purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

Public Law as explained in Senate Report No. 94-1318, published in Cumulative Bulletin 1976-2, page 597, provides that a club exempt from taxation and described in section 501(c)(7) is to be permitted to receive up to 35% of its gross receipts from a combination of investment income and receipts from non-members (from use of its facilities or services) so long as the latter do not represent more than 15 percent of the total receipts. It is further stated that if an organization exceeds these limits, all of the facts and circumstances must be considered in determining whether the organization qualifies for exempt status.

Section 1.501(c)(7)-1(a) of the Income Tax Regulations states that the exemption provided by Section 501(a) for organizations described in Section 501(c)(7) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, but does not apply to any club if any part of its net earnings 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.

Section 1.501(c)(7)-1(b) of the Income Tax Regulations provides that a club which engaged in business such as making its social and recreational facilities available to the general public or by selling real estate, timber, or other products, is not organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, and is not exempt under Section 501(a). Solicitation by advertising or otherwise for public patronage of its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure.

Revenue Procedure 71-17, published in Cumulative Bulletin 1971-1, page 683, establishes recordkeeping requirements for social clubs, to separate non-members income. If these requirements are met, certain presumptions as to member vs. non-member income may be made, as outlined in the Revenue Procedure.

Revenue Ruling 58-589, published in Cumulative Bulletin 1958-2, page 267, holds that a club will not be denied exemption merely because it receives income from general public; that is, persons other than members and their bona fide guests, or because the general public on occasion is permitted to participate in its affairs, provided such participation is incidental to or in furtherance of its general club purposes and it may not be said that income therefrom is inuring to members. This is generally true where the receipts from non-members are not more than enough to pay their share of the expenses.

Revenue Ruling 69-281, published in Cumulative Bulletin 1969-1, page 155, holds that a social club providing exclusive and automatic membership to homeowners in a housing development, with no part of its earning inuring to the benefit of any member, may qualify for exemption under 501(c)(7) of the Code.

Revenue Ruling 75-494, published in Cumulative Bulletin 1975-2 on page 214, provides that a club providing social and recreational facilities, whose membership is limited to homeowners of a housing development, will be precluded from qualifying for exemption under section 501(c)(7) of the Code by owning and maintaining residential streets, enforcing restrictive covenants, or providing residential fire and police protection and trash collection service.

This organization differs from the one described in Revenue Ruling 58-589 because the source of non-member income, settlements fees, is not incidental nor is it in furtherance of its general club purposes.

According to the information submitted, settlement fees account for █% and █% for fiscal years █ and █, respectively.

Financial information submitted does not demonstrate that income derived from the public will be distributed to charity or used to pay the public's share of expenses of the meet, but does indicate that the settlement fees will be added to the club's treasury and used for the general operating expenses of the club.

The organization is not similar to the one described in Revenue Ruling 69-281, because the maintenance of the roads, and undeveloped land constitutes private benefit to the lot owners.

[REDACTED]

In addition, the organization does not have a club facility, members do not commingle or socialize as described in section 501(c)(7) and the recreational activities are incidental to the primary purpose of the organization which is the maintenance of the property.

[REDACTED] is similar in nature to the organization described in Revenue Ruling 75-494, because it enforces restrictive covenants, provides a garbage collection service and maintains the private roads of the lot owners.

Since, the activities described above are not exclusively in the furtherance of pleasure and recreation as required under IRC 501(c)(7), we have concluded that you do not qualify for exemption from Federal income tax as an organization described in Section 501(c)(7) of the Code. In accordance with this determination you are required to file Federal income tax returns on Form 1120.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office, if you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter.

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

Sincerely yours,

[REDACTED]
[REDACTED]
Acting District Director

Enclosure: Publication 892