

Internal Revenue Service

Department of the Treasury

District
Director

31 Hopkins Plaza, Baltimore, MD 21201

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

CERTIFIED MAIL

OCT 05 1989

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted discloses that you were formed as an association in [REDACTED].

Your stated purpose is to ensure that [REDACTED] and the road right-of-way is restored, repaired, landscaped and maintained including snow removal, weed and brush removal according to the will of the Association and that the applicable deed restrictions for all property owners utilizing [REDACTED] as the access road to their property are enforced according to the will of the association.

Your activities are the maintenance and improvement of [REDACTED].

Income is derived from membership dues assessed against the seven property owners who utilize [REDACTED] to obtain access to their property.

Expenditures will be for maintenance and improvement of [REDACTED].

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

[REDACTED]

Section 1.501(c)(3)-1(a)(1) of the income tax regulations states that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one of the purposes specified in that section. 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. If an organization does not meet either the organization or operational test, it is not exempt.

Section 1.501(c)(3)-i(b)(4) of the regulations provides that an organization is not organized exclusively for 501(c)(3) purposes unless its assets, on dissolution, are distributed for 501(c)(3) purposes.

Your By-Laws do not contain a purpose which meets the definition of being organized exclusively for charitable, scientific, or educational purposes as defined in section 501(c)(3) of the Code. In addition, the organizing document does not contain a dissolution clause, which states the assets will be distributed for 501(c)(3) purposes upon dissolution.

Because your By-Laws do not contain an exclusively charitable purpose or provide for the proper distribution of assets, they do not meet the organizational test of section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the income tax regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the income tax regulations specifies that an organization is not organized or operated exclusively for an exempt purpose unless it serves public rather than private interests.

Section 1.501(a)(1)-1(c) of the income tax regulations defines "private shareholder or individual" as persons having a personal and private interest in the activities of the organization.

Based on the facts that your activities and purpose primarily consist of providing private benefit to the [REDACTED] property owners, and the organizing document does not meet the operational test, we have concluded that you do not qualify for tax-exempt status as an organization described in section 501(c)(3) of the Code.

[REDACTED]

Contributions to your organization are not deductible under Code section 170. You are required to file Federal income tax returns on Form 1120.

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office, or if you request, at any mutually convenient District Office. If we do not hear from you within 30 days from the date of this letter, this determination will become final.

A copy of this letter will be sent to the appropriate state officials in accordance with section 6104(c) of the Code.

If you do not protest this proposed determination in a timely manner, it will be considered as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax court, the court of Claims, 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."

Sincerely yours,

[REDACTED]
District Director

Enclosure: Publication 892

cc: State Attorney General [REDACTED]