



Person to Contact: [Redacted]  
 Telephone Number: [Redacted]  
 Refer Reply to:



Date: MAR 17 1988

Dear Applicant:

We have considered your application for recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code of 1954.

The information submitted discloses that you were incorporated on [Redacted] under the nonprofit corporation laws of the State of [Redacted].

Your purpose as stated in your organizing document is as follows:  
 "...for the purpose of governing certain condominium property, and the welfare of the condominium property community, which condominium property, known as [Redacted]"

Your activities as stated in your application are as follows:  
 "The money collected from each owner goes towards paying for the building's insurance premium, the water, electricity for common areas, all snow removal and lawn care, heat for all [Redacted] units, maintenance and upkeep of the exterior of building, common area streets."

Membership in your organization is limited to the [Redacted] condominiums in the [Redacted].

Section 501(c)(3) of the Code provides for the exemption from Federal Income Tax for corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to the private inurement of any individual.

	Initials	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
CCA	EW/204	EO/201	EP/EO:RS	MS/3/EO	RP/RO		
Surname	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]		
Date	2/10/88	2/18	3/3/88		3/4/88		

Section 1.501(c)(3)-1 of the Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows:

"(a) Organizational and operational tests. (1) 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 or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. (2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in Section 501(c)(3)..."  
"(b) Operational test. (1) Exempt activities. 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 an insubstantial part of its activities is not in furtherance of an exempt purpose. (2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals..."

Section 1.501(c)(1)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in Section 501(c)(1), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either the organizational or the operational test it is not exempt.

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 an insubstantial part of its activities is not in furtherance of an exempt purpose."

Section 1.501(c)(3)-1(c)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under Section 501(c)(3) to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or creator's family, or other individuals, or private interests, directly or indirectly, by such private interests.

Section 501(c)(4) of the code provides for the exemption from Federal income tax of civic leagues or organization not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(e)(2)(i) of the Income Tax Regulations provides 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 embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 74-17, 1974-1 C.B. 139 holds that 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 the State statute, with membership assessments paid by the unit owners does not qualify for exemption under Section 501(c)(4) of the Code.

By virtue of the essential nature and structure of a condominium system of ownership the rights, duties, privileges, and immunities of the members 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 owners 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.

We have concluded, based on the facts and evidence on file, that you are not operated exclusively as a charitable or educational organization described in Section 501(c)(3) of the Code because you are operating primarily for the private benefit of your 4 members. You are thus serving a private rather than a public interest.

In view of the above, we conclude whether you may qualify for exemption under Section 501(c)(4) as a social welfare organization. Based upon the above Revenue Ruling 74-17, you do not qualify as a social welfare organization.

A homeowners association that is not exempt under Section 591(c)(4) and that is either a condominium management association or a residential real estate management association generally may elect, under the provisions of Section 528 to receive certain tax benefits that, in effect, permit the exclusion of its exempt function income from its gross income. The election is made each year by filing Form 1139-N. For more information, see Publication 528 Tax Information for Homeowners Associations.

If you do not agree with these conclusions, you may within 30 days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after you have submitted your brief in the Chicago District Office and we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment of practice must be met. We have enclosed Publication 392, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

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 7429(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 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".

If we do not hear from you within 30 days from the date of this letter, this determination will become final. In accordance with Section 6164(c), we will notify the appropriate State officials of this action.

[REDACTED]

Please keep this determination letter in your permanent records.

If you agree with this determination please sign and return the enclosed Form 6018.

Sincerely yours,

[REDACTED]

District Director

Enclosures:  
Publication 992  
Form 6019