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EP/ED

~~FEB 6 1982~~

FEB 17 1982

Gentlemen:

Your application for exemption from Federal income tax under the provisions of Section 501(c)(12) of the Internal Revenue Code has been considered.

The information submitted shows that you were formed under Chapter [REDACTED], [REDACTED] Unit Ownership Act, on [REDACTED], to operate, manage, maintain and care for the [REDACTED], a condominium located in [REDACTED] County, [REDACTED].

Your activities consist of maintaining common areas and providing services for members such as snowplowing and shoveling, summer lawn maintenance and insurance on the building.

Your source of receipts are in the form of dues and assessments from members.

Section 501(c)(12) of the code provides for the exemption of the following organizations:

"benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses."

The term "like organizations" as used in the statute is limited by the types of organizations specified in the statute, and is applicable only to those mutual or cooperative organizations which are engaged in activities similar in nature to the benevolent insurance or public utility type of service or business customarily conducted by the specified organizations.

Revenue Ruling 65-201, 1965-2 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.

[REDACTED]

Revenue Ruling 69-280, 1969-1 C.B. 112, holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt from Federal income tax 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 an association 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 owner's 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.

Accordingly, while the activities engaged in by your organization may be mutually desirable, such services are not similar in nature to those customarily performed by a mutual ditch or irrigation company, or a mutual or cooperative telephone company, and consequently, you do not qualify for exemption from Federal income tax as a "like organization" under Section 501(c)(12) of the code.

In addition your creating document does not provide for the interests of members in the savings of your organization in proportion to their business with the organization or for members rights in retained funds.

You also have not provided for former member's rights upon withdrawal or termination.

Revenue Ruling 72-36 states that upon dissolution any gains from the sale of an appreciated asset should be distributed to all persons who were members during the period which the asset was owned by the organization in proportion to the amount of business done by such members during that period, insofar as is practicable.

Based on the information presented, we have concluded that you have not operated on a mutual or cooperative basis and that you are not a "like organization" within the meaning of Section 501(c)(12) of the code. We hold, therefore, that you are not entitled to recognition of exemption from Federal income tax under Section 501(c)(12) of the code. You are required to file Form 1120, U. S. Corporation Income tax returns.

Section 528 of the Internal Revenue Code, as added in the 1976 tax reform act provides that homeowners associations, including both condominium management associations and residential real estate management associations, may elect to be treated as tax-exempt organizations. If an election is made, the association is not taxed on its exempt function income. Please see pages 8 and 9 of the enclosed publication 528 for information on how to qualify for this election and for the definition of exempt function income.

[REDACTED]

If you wish to make the election, see instructions on back of Form 1120-H for where and when to file.

If you do not agree with these conclusions, you may request Appeals Office consideration. To do this, you must submit to the District Director within 30 days from the date of this letter, a statement of facts, law, and arguments, in duplicate, which will clearly set forth your position. You also must state whether you wish an Appeals Office conference. 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 to practice must be met.

If we not hear from you within the time specified, this communication will become our determination in the matter.

Very truly yours,

[REDACTED]  
District Director

Enclosures: Publication 588  
Publication 8927  
Form 1120-H