



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Dear \_\_\_\_\_ :

I am responding to your letter dated August 19, 2010. You ask for clarification of Rev. Rul. 70-604, 1970-2 C.B. 9, and whether a condominium management association must recognize excess member income attributable to excess assessments collected during the taxable year that is accumulated in a working capital reserve. I hope that the following general information is helpful.

Except as provided under section 528 of the Internal Revenue Code, a condominium management association that is classified as a corporation for federal income tax purposes must include in income funds it collects for its normal operating expenses. Any funds accumulated as contingency reserves are also includible in the association's gross income because the Internal Revenue Code does not provide for such accumulations without tax consequences. See Rev. Rul. 75-371, 1975-2 C.B. 52.

Rev. Rul. 70-604, 1970-2 C.B. 9 addresses a different situation in which a condominium management corporation directly or indirectly returns excess assessments to its shareholder-owners. The corporation's sole authorized activity is limited to assessing its stockholder-owners for the purposes of managing, operating, maintaining and replacing the common elements of the condominium property. The stockholder-owners of the corporation meet each year to decide whether to return excess assessments to themselves or to have the excess applied against the following year's assessments. In this situation, the corporation is not taxable on the excess assessments because the excess has been returned, in effect, to the stockholder-owners (whether in the form of cash or in the form of a credit against next year's assessment).

Rev. Rul. 70-604 does not provide that a condominium management association may exclude from income amounts it accumulates in a working capital reserve. See Rev. Rul. 75-371, which states that a condominium management association generally must include in income amounts accumulated in a contingency reserve.

This letter calls your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See section 2.04 of Rev. Proc. 2010-1, 2010-1 I.R.B. 1. If you have any additional questions, please contact or me at .

Sincerely,

Michael J. Montemurro  
Branch Chief  
Office of Associate Chief Counsel  
(Income Tax & Accounting)