

Internal Revenue Service

Post Office Box 1055
Atlanta, Georgia 30301

NOV 13 1987

Dear Sir or Madam:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code.

The Information submitted indicates that you were incorporated [REDACTED], under the laws of the State of [REDACTED]. Article II of your Articles of Incorporation provides that you were organized "...to enforce deed restrictions...promote the recreation, health, safety and welfare of the residents within the [REDACTED] development...."

Membership in your organization is available to residents residing in [REDACTED], a housing development located in [REDACTED]. Common areas in the development consist a [REDACTED] recreational park. The park is currently owned and maintained by the developers of [REDACTED]. However, upon completion of housing construction in the development, you will receive a warrantly deed for the park and will maintain it. This transfer of ownership is expected to occur in [REDACTED]. Only residents of [REDACTED] will have access to the park, it will not be open to the general public.

Your current activities consist of organizing recreational activities in the park, restricting use of the boating facilities to residents of [REDACTED], enforcing deed restrictions, and you hold [REDACTED] parties per year. You also conduct neighborhood programs in the development and publish a newsletter.

Section 501(c) of the Internal Revenue Code of 1954 describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes."

Section 1.501(c)(4)-1 of the Income Tax Regulations provides, in part, as follows:

"(s)(2)(i) 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 74-99, 1974-1 C.B., 131 sets forth the criteria that a homeowners' association must meet to qualify for exemption under section 501(c)(4) of the Code. One of the criterion is that common areas or facilities owned and maintained by a homeowners association must be for the use and enjoyment of the general public.

Revenue Ruling 80-53, 1980-1 C.B., 116 provides answers to specific questions as to whether the conduct of certain activities will affect the exempt status of homeowners' associations otherwise qualifying for exemption under 501(c)(4) of the Code. It holds that a homeowners' association cannot qualify for exemption under Code section 501(c)(4) if it restricts the use of its recreational facilities to members of the association. As stated in Revenue Ruling 74-99, the use and enjoyment of common areas owned and maintained must be extended to members of the general public.

Based on the information submitted you are not organized for the promotion of social welfare. By restricting the use of the boating facilities to your members, you are not operating in a manner that promote the common good and general welfare of the people in your community. The same will also hold true when ownership of the park pass to you. Your plans to restrict access to the park to members of your association will not serve the common good and general welfare of the people in your community. It is concluded that you are organized and operated for the private benefit of your members. Therefore, you do not qualify for exemption as an organization described in section 501(c)(4) of the Code. Your application was also considered under related paragraphs of Code section 501(c), and you do not qualify for exemption under either of them.

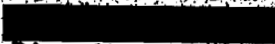
In a telephone conversation with your president, [REDACTED], on [REDACTED], we informed him that you would not qualify for exemption under section 501(c)(4) if access to common areas owned and maintained by you is restricted to your members and not extended to the general public. [REDACTED] stated that the organization would consider adopting a resolution extending access to the general public. We have no indication that this has been, or will be done. Subsequent attempts to reach [REDACTED] have failed.

If you do not agree with our proposed determination, we recommend that you request a conference with a member of the Regional Director of Appeals Staff. Your request for a conference should include a written appeal signed by an authorized officer giving the facts, law, and any other pertinent information to support your position as explained in the enclosed Publication 892. If you are to be represented by someone who is not one of your authorized officers, he/she will need to file a power of attorney or tax information authorization and be qualified to practice before the Internal Revenue Service as provided in Treasury Department Circular No. 230. The conference may be held at the Regional Office or, if you request, at any mutually convenient District Office.

If you do not choose to pursue this matter further, you should prepare Federal income tax returns on Form 1120 or 1120-H for the years indicated and file them with your Key District Director for exempt organization matters. Based on review of the financial information you furnished, it appears that returns for 1979 and 1980 should be filed. These returns should be filed within 60 days from the date of this letter unless a request for an extension of time is granted.

If we do not hear from you within 30 days, this letter will become our final determination.

Sincerely yours,


District Director