

SEP 9 1987

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 incorporated [REDACTED], under the [REDACTED] Nonprofit Corporation Act.

Your purposes briefly as stated in the Articles of Incorporation are:

(1) Serve as the Council of Owners for [REDACTED], a Residential Condominium Project;

(2) Promote the health, safety and welfare of the residents within the property;

(3) Protect, preserve, maintain, operate, and repair the general and limited common elements of the Project, for the use, enjoyment, and benefit of the members of the Council, and to administer and govern the common affairs of the members of the Council in connection with such project;

(4) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Council as set forth in that certain Declaration of Condominium [REDACTED], a Residential Condominium Project.

In the application you state that you make monthly assessments of each unit owner for his/her percentage of insurance and building and maintenance expenditures.

The Articles of Incorporation state that members of the Council shall be all persons who shall own (individually or jointly with others) one or more units in the Project.

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

"(1) Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (2)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign or behalf of any candidate for public office."

Section 1.501(c)(2)-1 of the regulations provides, in part, as follows:

"(a)(1)(i) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (1) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

When an organization's source of income is principally from membership dues and the income is used for the payment of benefits for members, it is essentially a mutual self-interest type of organization. Your income is used to provide for direct benefits like yard work, utilities, and insurance to the members. Any benefits to the larger community is minor and incidental.

Therefore, we conclude that you are not operated exclusively for section 501(c)(2) purposes and are not entitled to exemption from Federal income tax under the provisions of section 501(c)(2) of the Code.

Although a Form 1024 was not submitted for exemption as a section 501(c)(4) organization, consideration was given as to whether you would qualify under section 501(c)(4).

Section 501(c)(4) of the Internal Revenue Code provides exemption for:

"Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare..."

Section 1.501(c)(4)-1(a)(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 in this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements."

Revenue Ruling 74-17, 1974-1 C.B. 180, 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, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code.

The concept of social welfare implies a service or program directed at benefitting the community rather than a private group of individuals. Like the organization described in Revenue Ruling 74-17, you are providing services to your members that they would otherwise have to provide for themselves. You are a private cooperative enterprise for the economic benefit and convenience of your members. Any benefits to the community are not sufficient to meet the requirements of the regulation that you will be operated primarily for the common good and general welfare of the people of the community.

Therefore, we conclude that you would not meet the requirements for section 501(c)(4) and a Form 1024 should be filed.

Although you do not qualify for exemption under sections 501(c)(3) and 501(c)(4) of the Code, it appears you may qualify for treatment under section 528, which is applicable to certain homeowners associations. We are not ruling on your organization's qualification under section 528. Enclosed for your information is Publication 585 and 586.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 587 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

[REDACTED]

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 7428(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 this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 510(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6013 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

[REDACTED]
District Director

Enclosures:
Publication 892, 528, 530
Form 6013