

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

Date: JAN 16 1967

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].

The purposes for which you were formed are "to provide for the maintenance, preservation, and architectural control of the residential lots and common area within that certain tract of property legally described as follows:

"Lots [REDACTED] through [REDACTED], Block One (1), and Out Lot [REDACTED], [REDACTED] County, [REDACTED] and to promote the health, safety and welfare of the residents within the above described property and additions thereto..."

According to your 1966 application the activities of your organization include providing trash collection, snow removal, groundskeeping, exterior painting, roof replacement, and driveway replacement for the town house owners in the association.

This is a membership organization. Membership is limited to the homeowners in the [REDACTED] complex and the dues paid by your members are currently set at \$[REDACTED] per quarter.

Section 501(c)(3) of the Code provides for the exemption from Federal Income Tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and [REDACTED] to any private inurement or individual.

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) Primary 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)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in Section 501(c)(3), 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 organizational or the operational test it is not exempt.

Section 1.501(c)(3)-1(a)(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(a)(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 his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(b)(2) of the Income Tax Regulations provides that the term "articles of organization" or "articles" include the trust instrument, the corporate charter, the articles of association, or other written instrument by which an organization is created.

Section 1.501(c)(3)-(b)(4) of the Income Tax Regulations provides that an organization is not organized exclusively for one or more exempt purposes, unless its assets, upon dissolution, are dedicated to Section 501(c)(3) purposes.

Since your creating instrument does not provide for the distribution of assets to Section 501(c)(3) organizations upon dissolution you are not organized exclusively for Section 501(c)(3) purposes.

In order to comply with the requirements of the organizational test, the organization's purposes, as set forth in its creating documents, cannot be broader than the purposes set forth in Section 501(c)(3) of the Code. Since your purposes are "not exclusively" limited to one or more exempt purposes described in Section 501(c)(3) of the Code, you fail to meet the organizational test.

Revenue Ruling 75-286, 1975-2 E.R. 240 states that an organization which limits its preservation, beautification or improvement of public property to a specific geographic area, a city block where the public property adjoins the private property of the organization's members, does not qualify for exemption under Section 501(c)(3).

The organization was formed to provide services to members. You are maintaining property that adjoins your members' private property. You also are maintaining the exteriors of each of your individual members' homes. Based on the facts as presented, you are not operated exclusively for charitable purposes within the meaning of Section 501(c)(3), but for private benefit of your members.

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Code, since you are not organized and operated exclusively for charitable, religious, or other exempt purposes within the meaning of Section 501(c)(3).

Revenue Ruling 75-144, 1975 E.R. 149 holds that a nonprofit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks and common areas

for use of the residents is exempt under Section 501(c)(4) of the Code.

Rev. Rul. 74-99, 1974-1 C.B. 131 which modified Rev. Rul. 72-102, holds that a homeowners' association formed in conjunction with a real estate development is prima facie presumed to be operated for the private benefit of its members. In order to overcome this presumption, a homeowners' association must have the following characteristics:

1. It must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental;
2. It must not conduct activities directed to the exterior maintenance of private residences; and
3. The common areas or facilities must be for the use and enjoyment of the general public.

As stated above, you are maintaining the exterior of the private residences of your members. In addition, you also maintain the private common driveways between your members' residences. You, therefore, are operated for the private benefit of your members and not for the benefit of the community at large.

Therefore, we also hold you are not exempt from Federal Income Tax as an organization described in Section 501(c)(4) of the Internal Revenue Code.

You are required to file Federal Income Tax Returns on Form 1120 or 1120H.

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(c) of the Code.

If you do not agree with these conclusions, you may within thirty 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 to 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. The submission is to be handled by a conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to 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 we do not hear from you within 30 days from the date of this letter, this determination will become final. In accordance with Code Section 6104(c), we will notify the appropriate State officials of this action.

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 7426(b)(3) of the Internal Revenue Code provides in part that "A declaratory judgment or review 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".

Please keep this determination letter in your permanent records.

If you agree with this determination, please sign and return the enclosed Form 6013.

Sincerely,


District Director

Enclosures:
Form 6013
Publication 892