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

OFFICE OF THE CHIEF COUNSEL

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Dear :

This letter responds to your request for information dated October 05, 2009. In particular, you ask for clarification of Rev. Rul. 70-604, 1970-2 C.B. 9, and whether a condominium management association must recognize income attributable to excess assessments collected during the taxable year if the assessments are accumulated in a working capital reserve.

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 has taxable income to the extent its income exceeds its expenses. Thus, income attributable to excess assessments is generally taxable.

Rev. Rul. 70-604 concerns the issue of whether a particular condominium management corporation is taxable on excess assessments that are applied against the following year's assessments. The revenue ruling states that the sole authorized activity of the condominium management corporation is the assessment of 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 hold a meeting each year to decide whether to return any excess assessments to themselves or to have the excess applied against the following year's assessments. The ruling concludes that 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 corporation may avoid recognizing taxable income attributable to excess assessments by accumulating the excess amount in a working capital reserve.

There are two subsequent rulings that deal with special assessments. Rev. Rul. 75-370, 1975-2 C.B. 25, provides that special assessments for roof and elevator replacements collected by a condominium management corporation and held in a separate bank

account are not taxable to the corporation because it acts merely as an agent for the homeowners in receiving the special assessments (i.e., the corporation has a fiduciary obligation to expend the funds as specifically approved by the owner-stockholders). For another situation, Rev. Rul. 75-371, 1975-2 C.B. 52, provides that Section 118 excludes special assessments for replacing outdoor furniture from income.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2009-1, §2.04, 2009-1 I.R.B. 7 (Jan. 5, 2009). If you have any additional questions, please contact our office at .

Sincerely,

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

cc: