

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: DEC. 9 2 1986

CERTIFIED

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 disclosed that you were incorporated on [REDACTED] under the nonprofit corporation laws of the State of [REDACTED].

As stated in the amendment to and restatement of your Articles of Incorporation, your purpose is to provide for and to administer the operation, maintenance, management and cost of the [REDACTED].

As indicated in your Form 1023 Application for Exemption:

- (a) You are organized to manage the property, affairs and common business of the homeowners.
- (b) These homeowners are the only members of your organization.
- (c) You serve the common needs of the member homeowners.
- (d) Your benefits are limited to suit owners and their guests.
- (e) Only members and guests may use your common facilities.

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 educational purposes; no part of the net earnings of which inures to any private shareholder 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(e)(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(d)(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.

You are clearly organized and operated to serve the private interest of your cover members. You do not serve a public interest.

We have concluded, based upon the facts and evidence on file, that you are not operated exclusively as a charitable or educational organization described in Section 501(c)(3) of the Code because a substantial amount of your activities and operations are directed towards the improvement and advancement of the private interest 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).

Furthermore, we have also considered if you could qualify for exemption as a social welfare organization under the provisions of Code Section 501(c)(4).

Rev. Rul. 74-97, 1974-1 C.B. 131, which modified Rev. Rul. 77-142, 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.

After careful consideration of the evidence submitted, we have concluded that you are not primarily engaged in promoting the common good and general welfare of the people of the community and, therefore, you are not operating exclusively for the promotion of social welfare. Accordingly, we hold that you do not qualify for exemption from Federal income tax as a social welfare organization described in Section 501(c)(4) of the Internal Revenue Code of 1954.

Therefore, we hold you are not exempt from Federal income tax as an organization described in Section 501(c)(4) of the Code. Accordingly, you are required to file Federal income tax returns, Form 1120 or 1120B.

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(a) 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 raise 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. If the matter is to be handled by a representative, the 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 851, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

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 (or the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

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.

Please keep this determination letter in your permanent records.

[REDACTED]

If you agree with this determination, please sign and return the enclosed Form 6018.

Sincerely yours,

[REDACTED]
District Director

Enclosure:

Form 6018
Pub. 892