



Person to Contact [Redacted]  
Contact Telephone Number [Redacted]  
Refer Reply to [Redacted]

Date DEC 20 1985

# 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 discloses that you were incorporated on [Redacted] under the nonprofit corporation laws of the State of [Redacted].

Your Articles of Incorporation indicate your purposes to be providing housing for persons age 55 years or older and providing related services and facilities designed to meet the physical, spiritual, social, and psychological needs of these individuals.

Your correspondence explains that [Redacted] was formed and is governed by local churches. These same churches are responsible for [Redacted] other corporations operating Section 202 low income elderly housing projects. These churches perceived a need for housing for the moderate income elderly and thus created your organization. You plan to develop a unique housing project which would be limited solely to the senior citizens of the community. [Redacted] governs the programs and services of the housing project, and your organization, as a member with a [Redacted] voting interest maintains a church influence in the major decisions made.

Your organization is developing [Redacted] condominium units for sale to individuals of moderate income. Construction loans have been received to build units in a tract of land called [Redacted] in the city of [Redacted]. The condominiums are [Redacted] square feet in size plus some extension provided as options in the master bedroom and den. The basic price of the unit is \$ [Redacted] with a selection of extras that the buyer may include in the purchase. The cost is based on the fair market value of the property. To date, financing has not been necessary because the buyer has used cash proceeds from the sale of his previous home. [Redacted] does not provide financing and any required mortgage arrangements must be made by each individual.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
Surname	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
Date	11/27/85	12/12/85	12/13/85	12/17/85	12/17/85		

Copies of purchase agreements were furnished and further substantiate that the sale price of the units usually exceeded \$ [REDACTED]. The condominium units are sold through the multiple listing services of the [REDACTED] and the [REDACTED] Real Estate Firm is handling the listings.

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 inure 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:

(c) 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)...."

(i) 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(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.

In construing the meaning of the phrase "exclusively for educational purposes" in *Better Business Bureau v. US*, 326 U.S. 78 (1945) the Supreme Court of the United States said:

This plainly means that the presence of a single non-educational purpose, if substantial in nature will destroy the exemption regardless of the number or importance of truly educational purposes". This statement applies equally to any category or charitable purpose under Section 501(c)(3) of the Code.

Revenue Ruling 79-18, 1979-1 C.B. 194 states that a nonprofit organization which provides specially designed housing to elderly persons at the lowest feasible cost and maintains in residence those tenants who subsequently become unable to pay its monthly fees is an organization operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Code.

Your organization does not meet the definition of charitable within the meaning of Section 501(c)(3) of the Code. The condominiums are being sold at fair market value rather than the lowest feasible cost. The buyers must arrange their own financing and if unable to meet the mortgage payments, will not receive financial aid nor services from your organization. Thirdly, the above revenue ruling defines elderly as being over 65 years of age. You are not serving a distressed class because the individuals do not meet the age requirement and are not in a low income bracket. Furthermore, there are no specific services designated for the elderly at this housing project.

Even more importantly, the entire operation is run in the same manner as a trade or business. As noted in Section 142 of the Code, any activity carried on for the production of income from the sale of goods or the performance of services is considered a trade or business. Your entire time and energies are being devoted to activities which commercial entities undertake. Consequently, these activities possess the frequency and continuity as in a "for profit" operation. The units are sold through a real estate firm to the general public at competitive prices. The purchasers can well afford sufficient housing without the aid of your organization. As a matter of fact, you are in no way involved with the financing. In [redacted], over \$ [redacted] was paid in real estate commissions so that the realtor, is, also, profiting from the sales. In essence, the sole activity is the sale of [redacted] condominium units with modern conveniences to those individuals who can meet the sales price.

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).

**You are required to file Federal Income Tax Returns.**

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. 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 892 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(f)(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".

Please keep this determination letter in your permanent records.

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

Sincerely yours,

  
District Director

Enclosures  
Publication 892  
Form 6018