

**General Counsel Memorandum 35440-General Counsel's Response to Proposed [at That Time]
Revenue Ruling 74-17 [IRC Section 501(c)(4)]a**

Cross Reference Data

Topical

Exempt Organizations
Form 990

Citation

IRC Section – 501(c)(4)
Regulations Section-1.337(d)-4
Cases –
-Rancho Santa Fe
-Flat Top Lake Association v. U.S.A.
-Commissioner v. Lake Forest, Inc.
-Lake Petersburg Association v. Commissioner
-Portland Golf Club v. U.S.
Revenue Ruling – 74-17

Summary

GCM 35440 is the response to proposed (at that time) Rev. Rul. 74-17. It clarifies and explains that condominium associations cannot qualify as social welfare organizations under IRC Sec. 501(c)(4) or any other provision of IRC Sec. 501 due to the required ownership structure and nonpublic nature of the benefits. Condominiums may, however, be restructured as cooperatives and have little or no taxable income.

General Counsel's Response to Proposed [At That Time] Revenue Ruling
74-17 [IRC Section 501(c)(4)]

GCM 35440

Date Numbered: August 16, 1973

REV RUL. 74-17

Internal Control Number: CC:I-94-73
Br5:MDFinley
0501.04-00

WADE F. HOBBS, JR.

Acting Assistant Commissioner (Technical)

Attention: Director, Miscellaneous and Special Provisions Tax Division

In re: Homeowner's Associations

This is in reply to your memorandum, (TMS:EO:R:1) dated February 9, 1973, forwarding a proposed technical assistance memorandum

(Control No. 72-12-29365) to this office for comments and concurrence.

ISSUES

1. The principal issue is whether an organization organized and operated for the purpose of managing a residential condominium property and providing administrative and maintenance services for the areas of the condominium property that are owned by the members of the organization as tenants in common, including exterior maintenance upon each member's individually owned residential unit, qualifies for recognition of exemption as a social welfare organization described in Int. Rev. Code of 1954, §501 (c)(4).
2. A subsidiary issue on which you have requested comment is whether a revenue ruling should be published holding "that a condominium, a specific type of housing cooperative, does not qualify for exemption from Federal income tax under section 501 (c) (4) or any other subsection of the Internal Revenue Code." We interpret the quoted material as intending to raise the issue whether a residential condominium management association qualifies for recognition of exemption under any other subsection of Code §501(c).

CONCLUSION

1. You have concluded that such an organization does not meet the requirements of Code §501 (c)(4) "since the administration of the condominium is for its members as individuals and not for the direct betterment of the community as a whole."

We agree with your conclusion that a condominium homeowners' association does not qualify for recognition of exemption from Federal income tax as a social welfare organization described in Code §501 (c)(4). Our rationale for so concluding differs from yours in some respects.

2. We favor publication of the position that homeowners' associations of the kind here under consideration do not qualify under Code §501 (c)(4) or under any other subsection of Code §501(c).

We recommend that consideration be given to simultaneous publication of a ruling that would hold such an association may qualify for tax treatment as a cooperative under Subchapter T, §§ 1381 et seq. of the Code, if it otherwise meets the requirements of Subchapter T

ANALYSIS

Code §501 (c)(4) provides, in part, that "civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare" qualify for exemption under Code §501(a).

Tress. Reg. 1.501(c)(4)-1 (a)(2)(i) says, in part, 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 within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements..."

By virtue of the essential nature and structure of a condominium system of ownership, as reflected in enabling legislation that has been enacted by the various states, it is apparent that the rights, duties, privileges and immunities of the members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property interests in the condominium.

The condominium system of ownership necessarily entails ownership in common by all condominium unit owners of a great many so-called common areas or elements directly essential to and supportive of the individual units of the condominium in either a structural or a functional sense, or both.

These two factors illustrate the undeniably private and non-public nature of the benefits for which associations like those here under consideration are designed. In the circumstances, therefore, the conclusions reached in a proposed G.C.M. in ... 1-72-73, which we have sent to you for consideration are fully applicable here.

The following excerpts from various court decisions involving an interpretation of Code §501(c)(4) are generally apt in the subject context:

As indicated at the beginning of this memorandum, we know of no other provision of Code §501(c) under which homeowners' associations of the kind Involved in this case can qualify for exemption from income tax. In our opinion, however, associations of the kind involved here and in the . . . case (1-72-73) could if properly organized and operated, meet the requirements of Subchapter T, Code §§ 1381 et seq. relating to the tax treatment of cooperatives and thus arrange to have little or no taxable income. In this connection, see the T:I:C Reference file entitled

. . . published as Rev. Rul. 70-604, 1970-2 C.B. 9 and the corresponding legal file titled Condominium Corporation-Tax Treatment of Surplus Monies of a 1-3403. We recommend that you submit the subject case and the ... case to the Income Tax Division of your office (T I:C) for evaluation under Subchapter T

CONCLUSION

In the light of the foregoing discussion, you may wish to recast the proposed technical assistance memorandum somewhat:

- 1) To include some discussion of the condominium concept as expressed in California law, even though the general similarity of California law respecting condominiums to that of other states is conceded; and
- 2) To indicate even more plainly and precisely the fundamental incompatibility of the concept of a condominium system of ownership-and in particular, that essential characteristic of the system whereunder unit owners associate together for the sole purpose

of regulating the administration and maintenance of their own property-with the concept of social welfare contemplated by Code §501(c)(4) and manifested in numerous judicial and administrative precedents.

Note:

a GCM 35440 clarifies and explains why condominium associations cannot qualify as social welfare organizations for purposes of IRC Sec. 501 (c)(4).

Gary Porter, CPA is licensed by the California Board of Accountancy and the Nevada Board of Accountancy. His practice is limited to common interest realty associations consisting of condominium, homeowners, timeshare, cooperative and condo hotel associations. Mr. Porter is the creator and coauthor of PPC's (Practitioners Publishing Company) Guide to Homeowners Associations and Other Common Interest Realty Associations and Homeowners Association Tax Library, in addition to more than 200 articles. Mr. Porter has been quoted or published in The Wall Street Journal, Kiplinger's Personal Finance, Money Magazine, The Practical Accountant, Common Ground, Condo Management, and CAI's The Ledger Quarterly. He has been working with homeowners associations since 1976, and has been a frequent presenter at industry and CPA venues; speaking at events for more than 30 state CPA societies.