



FINANCE
NEW • YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

December 15, 1998

RE: Exemption Application
General Corporation Tax

FLR #: 974710-006

Dear _____ :

This letter is in response to your request dated August 9, 1997 for exemption from the New York City General Corporation Tax ("GCT") submitted on behalf of _____ (the "Organization"). For the reasons indicated below, we are unable to conclude that the Organization qualifies for exemption from the GCT. See Title 19 Rules of the City of New York §11-04(b)(8).

- 1. The Organization is not organized as a nonstock corporation.(GCT) See attached explanation.
- 2. The Organization is not operated exclusively for nonprofit purposes.(GCT) See attached explanation.
- 3. The Organization is not organized exclusively for nonprofit purposes.(GCT) See attached explanation.
- 4. The Organization has not established that no part of its net earnings inures to the benefit of any private shareholder or individual.(GCT) See attached explanation.
- 5. The Organization has not submitted a copy of a letter from the Treasury Department exempting it from federal income tax or other evidence of a federal tax exemption. Therefore, the Organization is not entitled to a presumption that it is exemption from GCT.

If you have any questions, please call Ellen Hoffman, Director, Tax Law Division at (718) 403-3662. Thank you.

Very truly yours,

Devora B. Cohn
Assistant Commissioner,
Legal Affairs

EXPLANATION

Section 11-04(b)(8) of the Rules of the City of New York ("RCNY") provide that a nonstock corporation organized and operated for a nonprofit purpose not engaged in substantial commercial activities is not subject to the GCT.

You have advised us that the Organization is formed under the Not-For-Profit Corporation Law and is operated:

To own, acquire, construct, maintain, administer, control, preserve and operate the common areas and recreation facilities on behalf of and for the benefit of the homeowners in the residential development...; to promote the common interests, benefit, health, safety and welfare of the residents within the development; to enforce any and all covenants, restrictions and agreements applicable to the development... and generally to foster, promote and advance the health and welfare of the residents of the community by all available means and methods.

Based on the information submitted the activities of the Organization consist of collected common charges from residents in the development, all of whom must be members of the Organization to be used for the repair and maintenance of the common areas including sewers.

RCNY section 11-04(b)(8)(ii) provides that a corporation denied a federal tax exemption under Internal Revenue Code section 501 will be presumed not to be organized and operated for a nonprofit purpose absent substantial evidence to the contrary. You have advised us that you have withdrawn your application for a federal tax exemption after having been advised that the Organization probably would not meet the criteria for a federal tax exemption. Therefore, the Organization is presumed not to be eligible for exemption.

Various federal authorities indicate that the Organization does not qualify for a federal exemption as a social welfare organization. In Revenue Ruling 74-17, 1974-1 CB 130, the Internal Revenue Service ruled that a condominium housing association formed and operated to manage, maintain, and care for the common areas of a condominium project was not exempt because the organization's activities were for the private benefit of the members and were not for the promotion of social welfare. That ruling relies on Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir., 1962), reaching a similar conclusion regarding a cooperative housing corporation's activities.

Based on the above authorities, we have determined that the Organization is operated for the private benefit of its members and is not operated for a nonprofit purpose. A corporation electing the partial tax exemption under Internal Revenue Code section 528 as a homeowners association is not exempt from the GCT as a nonprofit corporation.