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Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA.

Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES:

1. Can a condominium corporation rent a suite for an amount in excess of its costs of operating and maintaining the suite and still qualify for the exemption from tax provided by paragraph 149(1)(l) of the ITA? 2. If the rental profits are used to reduce members' fees, does this affect the tax exemption?

POSITION:

1. No; 2. Yes

REASONS:

1. The condominium corporation appears to have a profit purpose. 2. Aside from point 1, this is making income available for the personal benefit of a member.

2009-034862

XXXXXXXXXX L. Zannese

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December 15, 2009

Dear XXXXXXXXXXXX :

Re: Condominium Corporations and Paragraph 149(1)(l)

We are writing in response to your letter of July 2, 2009, regarding condominium corporations and paragraph 149(1)(l) of the Income Tax Act (the "Act"). Specifically, you request our views as to whether a condominium corporation can enter into a rental agreement through which it expects to earn a profit and remain an entity exempt from tax under paragraph 149(1)(l) of the Act. Further, you ask if the condominium corporation can remain exempt under paragraph 149(1)(l) if it uses such profit to lower the fees of its members.

The situation outlined in your letter appears to relate to a factual one, involving a specific taxpayer. It is not this Directorate's practice to comment on proposed transactions involving specific taxpayers other than in the form of an advance income tax ruling. For more information about how to obtain a ruling, please refer to Information Circular 70-6R5, "Advance Income Tax Rulings", dated May 17, 2002. This Information Circular and other Canada Revenue Agency ("CRA") publications can be accessed on the internet at <http://www.cra-arc.gc.ca>. Should your situation involve a specific taxpayer and a completed transaction, you should submit all relevant facts and documentation to the appropriate Tax Services Office ("TSO") for their views. A list of TSOs is available on the "Contact Us" page of the CRA website. Although we cannot comment on your specific situation, we are prepared to provide the following general comments, which may be of assistance.

In general terms, paragraph 149(1)(l) of the Act provides that the taxable income of a club, association or society is exempt from tax under Part I of the Act for a period throughout which the club, association or society meets all of the following conditions:

- * it is not a charity;
- * it is organized and operated exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit; and
- * it does not distribute or otherwise make available for the personal benefit of a member or shareholder any of its income.

While Income Tax Technical News #4 comments that "most residential condominium corporations will qualify as non-profit organizations under paragraph 149(1)(l)" it also indicates that this is because it was assumed that such entities normally operate exclusively for any purpose except profit. Whether any entity operates exclusively for any purpose except profit is a factual determination that must be made on a case-by-case basis.

In order to meet the requirement of operating exclusively for any other purpose except profit, a condominium corporation can only offer services for which the fees charged are approximately equal to the amount the condominium corporation expects to incur to provide such services. A condominium corporation cannot intentionally charge fees in excess of costs; to do so is operating with a profit purpose. Thus, a condominium corporation that intentionally rents out a suite for an amount higher than the expected cost of maintaining and operating that suite does not qualify for

the exemption provided by paragraph 149(1)(l) of the Act. This position applies equally to all activities a condominium corporation might choose to undertake, such as the operation of a parking lot, laundry facilities or a fitness/health centre.

With respect to your second question, we agree that when a condominium corporation reduces members' fees as a consequence of intentionally charging rent in excess of expected costs, this would generally be considered to be making the income of the condominium corporation available for the personal benefit of its members.

As a final note, we understand that condominium corporations may levy amounts from members that are put aside for identified capital projects, for example, putting a new roof on a building. As the cost of such capital projects may be considerable, the condominium corporation may choose to collect these amounts over several years in order to raise the necessary funds. The CRA accepts that collecting amounts in this manner will not, in and of itself, prevent the condominium corporation from being exempt under 149(1)(l) of the Act. Moreover, a condominium corporation can earn reasonable interest income with respect to this fund and continue to qualify for the tax exemption. However, a condominium corporation cannot intentionally collect amounts in excess of what is reasonable to fund these identified capital projects, nor may it use these funds to aggressively earn investment income. Either of these two actions could result in a condominium corporation not meeting the criteria of paragraph 149(1)(l).

We trust that these comments will be of assistance.

Yours truly,

Eliza Erskine

Manager

Non-Profit Organizations and

Aboriginal Issues

Financial Sector and Exempt Entities Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch