CR PROJECT
3090 KING STREET.
BERKELEY, CA 94703

September 4, 2006

VIA FACSIMILE TRANSMISSION
AND U.S. MAIL

Department of the Treasury
Internal Revenue Service
Exempt Organizations
Attn. Deborah James
Room 1400 Group 7828
31 Hopkins Plaza
Baltimore, MD 21201

Re: CR Project Exemption Application (EIN #20-0309905)

Dear Ms. James:

This letter is in response to your letter dated August 14, 2006, a copy of which is attached hereto. This letter shall respond to each point in your letter using the numbering provided in your letter.

1. CR Project was organized and has been operated exclusively for charitable purposes, i.e. to provide affordable housing to persons with incomes which qualify. Your August 14, 2006 letter contends that the organization 's Form 1023 application and other materials gives the impression that the organization was formed to serve the private interests of its members. This is not a correct impression. The organization was formed and has been operated exclusively for public, charitable purposes pursuant to the safe harbor rules set forth in Revenue Procedure 96-32. For the reasons stated below, CR Project believes the organization can carry its burden of demonstrating that the organization serves exclusively public, charitable purposes.

As previously noted, the organization falls within the safe harbor provisions of Revenue Procedure 96-32 Section 3 because the required percentage of units are occupied by residents that qualify as low income or very low income and the housing is affordable to the charitable beneficiaries.

As with all groups who seek to base their charitable exemption on the provision of affordable housing to low income persons, you are correct in concluding that the qualified tenants who lease units from the organization in some sense receive a private, personal benefit by leasing affordably priced housing from the corporation. The provision of this type of benefit to low income persons is consistent with the charitable purpose of the organization and does not mean that the organization is operated for the private benefit of the low income residents of the organization, rather than for the public's benefit. The logic behind Revenue Procedure 96-32 and its safe harbor for organizations providing affordable housing is

that the entire public benefits when affordable housing is made available to low income persons. Organizations basing their exemption on Rev. Proc. 96-32 are not ineligible for exemption merely because low income tenants receive a private benefit.

In this case, this organization benefits the public in precisely the same way. Residents of property owned and operated by the organization are eligible to rent units because of their low income, as defined by Rev. Proc. 96-32. All residents, at the time they are selected to rent a housing unit from the corporation, are members of the general public, not members of the organization. Thus, the organization benefits the public because it makes affordable housing available to low income members of the general public. As of the date of this letter, the organization provides affordable housing to approximately 32 low income persons. The fact that low income residents, selected from the entire general public, are entitled to become members of the organization ***after*** their selection so that they may participate in the democratic operation of the organization does not mean that the organization is operated for their private, personal benefit, rather than for the public's benefit.

As previously stated, the use of the term "cooperative" to describe the housing provided by the organization does not indicate that the organization is a legal cooperative as defined under federal or state law. A "cooperative" corporation under California and federal law is a corporation in which the shares of the corporation are owned by the members of the corporation and a corporation operated for the private benefit of the members. (See e.g. Corp. Code Sec. 12200 et seq.) A cooperative housing corporation would return annual earnings as patronage dividends to the members of the corporation and would provide for division of the cooperative assets amongst the members upon dissolution. (*Id.*)

With CR Project, no resident has any ownership interest in the organization or in the housing unit they occupy. Moreover, the bylaws and articles of the corporation specifically prohibit the distribution of profits from the organization to its members. Upon dissolution, no equity of the corporation may inure to the members or any private person. If CR Project was a private cooperative corporation as that term is defined in applicable law, its assets would be jointly owned by the members for the members' private benefit and those assets would be subject to division by the members upon dissolution of the corporation.

In the organization's Form 1023 application and in other materials you viewed on-line,[1] the term "cooperative" was imprecisely used to describe a model of housing in which residents share facilities and domestic chores. The organization apologizes for the confusion that this imprecise use of the term "cooperative" has caused. The organization's reference on Form 1023 to the "student cooperative housing model" is telling of the confusing way this term was used. "Student cooperative" is a lay term used imprecisely to indicate houses shared by students. The term can cover houses rented by students from a private landlord or dormitories

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1 The language used to describe a "cooperative" found at www.cooperativeroots.org was not drafted or approved by the board of directors of the organization. This language does not correctly define the term "cooperative" as it is used in the organization's Form 1023 application.

operated by a university-associated non-profit organization. The term does not ordinarily have anything to do with a student living situation having legal cooperative attributes.

This is a situation in which the term "cooperative" has multiple meanings depending on context. The term can indicate a legal cooperative formed for the private benefit of its members, or it can be used generally and imprecisely to indicate a shared housing situation. On Form 1023, the term was used in the general, imprecise fashion.

The organization's use of the term "cooperative" in its Form 1023 application and on-line may be confusing and imprecise by implying that the organization is a legal cooperative but the use of the term does not render the organization non-exempt because all of the organization's operations have been consistent with the rules set forth in Rev. Proc. 96-32 and have been ***inconsistent*** with a legal "cooperative" housing situation. Because all units are offered for rent to members of the general public with qualifying incomes, the organization provides a public, charitable benefit.

This is not a situation in which individuals have "associated together to provide a cooperative service for themselves" as contended in your letter. As stated above, the organization currently has approximately 32 tenants residing in two houses. At the most, three (3) of these persons were in any way associated with the founding of the organization. Of the nine (9) persons listed as officers or directors of the corporation in the organization's Form 1023 (Ari Bigeleisen, Lance Olson, Tracie Citron, Adrian Wilson, Zack Norwood, Taal Levi, Sonya Hammons, Nikolas Schmidt and Marc de Giere), as of today's date, only Zack Norwood, Nikolas Schmidt and Ari Bigeleisen reside at the property, and Ari Bigeleisen will cease his residence as of September 15, 2006. The persons listed on the initial Form 1023 who are currently residents of housing provided by the corporation are eligible for residence because of their low or very low income. The organization was not formed to provide for their private benefit and these residents have not received any differential treatment or financial advantage as opposed to any other similarly situated member of the general public who may rent a housing unit from the organization. (See generally *World Family Corp. v. Comm.* (1983) 81 TC 958 (organization should not be penalized for financial relationship with founder on some basis as would be reasonable with outsider).)

Rev. Proc. 96-32 Section 7 discusses circumstances in which an organization with an otherwise charitable purpose may fail to qualify for exemption because the private interest of individuals with a financial stake in the project are furthered:

> For example, the role of a private developer or management company in the organization's activities must be carefully scrutinized to ensure the absence of inurement or impermissible private benefit resulting from real property sales, development fees, or management contracts.

(Rev. Proc. 96-32 Section 7.) In this case, Section 7 does not apply because no founder, officer or the director has received a private, financial benefit based on the

operations of the corporation. No property has been purchased from or sold to any founder, officer or the director of the corporation. No founder, officer or the director of the corporation has been compensated for the management of the organization. No founder, officer or the director of the corporation has personally profited based on the operations of the corporation.

Your citation of Revenue Rulings 71-395 and 69-175 are not controlling in this situation because neither of these revenue rulings deal with organizations formed to provide affordable housing to low income residents. Moreover, both were decided many years prior to the issuance of Rev. Proc. 96-32. As stated above, organizations formed to provide affordable housing to low income residents always incidentally provide a private, personal benefit to the low income tenants they serve, yet this does not make these organizations ineligible for exemption because the Service has recognized that these organizations provide a public benefit to the general public by providing affordable housing. The service promulgated Revenue Procedure 96-32 to recognize this charitable purpose and clarify confusion created by earlier revenue rulings. (See also Rev. Rulings 67-138, 76-408 and 70-585.)

In Rev. Ruling 71-395, approximately 50 artists formed and operated the organization. By contrast, in this case, approximately one dozen persons participated in forming the organization. It currently provides housing to approximately 32 persons. As of the date of this letter, only three (3) of the persons involved in the organization's initial formation reside at property owned by the organization and these persons are income eligible to receive affordable housing from the organization and receive no special financial arrangement compared to other members of the general public. As stated above, this number will decrease to two by the end of September. Thus, this situation is not comparable to Rev. Ruling 71-395 because in this case, the organization was not formed and has not been operated for the private, personal financial benefit of its founders or members.

Similarly, in Rev. Ruling 69-175, the organization was founded and operated for the private benefit of the parents who were its founders. By contrast, in this case, the founders organized the corporation not to provide for their own needs but to provide affordable housing to the general public. At the time of founding, the founders did not know the members of the public who would eventually rent the affordable units that the organization sought to develop and lease to the public. Residents selected to lease affordable housing from the corporation since the time of formation have been members of the general public.

Based on all of the foregoing, the organization hopes you will disregard the imprecise, confusing language used in the application and other on-line materials and conclude that the corporation serves an exclusively public, charitable purpose based on its track record of providing affordable housing to members of the general public pursuant to the safe harbor provisions of Rev. Proc. 96-32.

2. The organization apologizes for the confusing and contradictory answer provided on Form 1023 with respect to lobbying. The garbled response was due to an error. In response to Part VIII line 2a and 2b, the organization correctly answered "yes" with respect to the question "do you attempt to influence legislation." The

organization further filed From 5768 in order to elect to be treated under Section 501(h).

Due to an error, the response on Attachment C, Part VIII, Question 2a and b did not agree with the response made in response to Part VIII Line 2a. In fact, the response to Part VIII Line 2a was and is correct. The organization requests that you ignore the statement on Attachment C. The organization is willing to submit an amended Attachment C to clarify the response if you desire.

The reason the organization filed Form 5768 and checked "yes" with respect to Part VIII Line 2a was ***because*** the organization wished to disclose its very limited lobbying activities to the IRS. As stated on the website, the organization endorsed Measure I. No funds or paid staff time was consumed in support of Measure I. The endorsement was not matched with any organizational activity. Since the endorsement of Measure I, the organization has not engaged in any activity that constitutes lobbying under applicable regulations.

Please let me know if you have any questions regarding the foregoing or if you require any additional information.

Sincerely,

Andrew Kreamer

Andrew Kreamer
CFO, CR Project

JESSE D. PALMER
ATTORNEY AT LAW
PO BOX 3885, BERKELEY, CA 94703
(510) 549-1436

August 28, 2006

VIA FACSIMILE TRANSMISSION

Department of the Treasury
Internal Revenue Service
Exempt Organizations
Attn. Deborah James
Room 1400 Group 7828
31 Hopkins Plaza
Baltimore, MD 21201

Re: CR Project (EIN #20-0309905)

Dear Ms. James:

This letter is confirm our telephone conversation today in which you agreed that my above captioned client could have an additional week to respond to your August 14, 2006 letter, received by me on August 21. Vacation schedules have required additional time to respond. As September 4 is a holiday, I will provide you with a response by September 5, 2006.

Please let me know if you have any questions regarding the foregoing or if you require any additional information.

Sincerely,

Jesse D. Palmer

Department of the Treasury
Internal Revenue Service

Date: August 14, 2006

C R Project
c/o Jesse D. Palmer
P.O. Box 3885
Berkeley, CA 94703

Employer Identification Number:
20-0309905
Person to Contact – Group #: 7828
Miss D. James, ID#52-03527
Contact Telephone Numbers:
410-962-9534 Phone
410-962-8193 FAX
Response Due Date:
August 28, 2006

Dear Sir or Madam:

Thank you for the information recently submitted regarding your application for exemption. Unfortunately, we need more information before we can complete our consideration of your application.

Please furnish the information requested on the enclosure by the response due date shown above. If you do not provide the requested information in a timely manner, we will consider that you have not taken all reasonable steps to secure the determination you requested and we will close your case.

If you have any questions concerning this matter, or you cannot meet the response due date, please contact the person whose name and telephone number are shown above in the heading of this letter.

Please direct all correspondence regarding your case to the address listed below exactly as shown. Use of a different address, may result in substantial delays or loss of mail, or the return of your correspondence by the post office.

Attn: Miss D. James
Internal Revenue Service
TE/GE : Group #7828
31 Hopkins Plaza, Room 1400
Baltimore, MD 21201

Thank you for your cooperation.

Sincerely,

Deborah James

Exempt Organizations Specialist

Enclosure:

Note: <u>Your response to this letter must be submitted over the signature of an authorized person or of an officer whose name is listed on the application.</u>

PLEASE ATTACH A COPY OF THIS LETTER TO ALL CORRESPONDENCE.

Additional Information Requested:

In the response that you provided by letter dated July 28, 2006, you stated that the exclusive purpose of your organization is to provide affordable housing to persons with low and very low income using a model that includes some cooperative ideas and principals but which is not a legal cooperative as that term is defined in California or federal law. You stated that while your responses to Form 1023 discuss the term "cooperative," this term is not used to indicate that low-income residents who lease housing from the corporation have any ownership interest in CR Project or their units. Rather, you stated that the use of the term "cooperative" indicates that residents share kitchen and bathroom facilities and share meals at properties managed or owned by the corporation and that the use of the term "cooperative" is also intended to describe a model of affordable housing in which residents participate in the management and operation of the houses they share with other residents.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations states 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) of the Code. 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 regulations asserts that an organization is not operated exclusively for exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of the persons who created it.

In <u>Better Business Bureau of Washington, D.C., Inc. v. United States</u>, 326 U.S. 179, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Operating for the benefit of private parties constitutes a substantial nonexempt purpose. <u>Old Dominion Box Co. v. United States</u>, 477 F.2d 340 (4th Cir. 1973), cert. Denied 413 U.S. 910.

Enclosed with this letter is a copy of material that we found on the Internet about your organization. Your organization, under the name of Cooperative Roots, is listed in the Bay Area Cooperative Housing Directory. The information on your website described a cooperative or co-op as an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through jointly owned and democratically-controlled enterprise. The web site also provided a history of your organization as well as the various activities engaged in since the formation of the group.

This description appears to apply to the description of your organization as provided with your Form 1023 application. For example, your Form 1023 application stated, "C.R. Project was formed in October of 2003 by a group of residents from Berkeley, California interested in creating affordable housing. Familiar with the student cooperative housing model and ecological building practices, the founders developed a mission and purpose for C.R. Project, which combines grassroots affordable housing development with cooperative and environmentally sound practices. C.R. Project builds sustainable, affordable housing, empowers people to create democratic cooperatives, and strengthens local communities through shared resources and education." Based on the information provided on your application and the Internet, your organization gives the impression that it was formed to serve the private interests of the members of the cooperative.

To illustrate the Service's position regarding organizations that operate for the benefit of their members, we are enclosing copies of Revenue Rulings 71-395 and 69-175. Your organization appears to be similar to the organizations described in these revenue rulings. Therefore, based on the information you provided on your application along with the information on your website, we are unable to determine whether your organization qualifies for exemption under section 501(c)(3). The regulations cited above place the burden on the organization to demonstrate that it serves a public purpose and not the private interests of the persons who created it. While the specific facts in each of the revenue rulings are different from your organization, the end result is that in each case, the individuals associated together to provide a cooperative service for themselves.

1. Since all of the purposes enumerated under section 501(c)(3) are public purposes, please explain how your organization is organized and operated exclusively for charitable purposes.

2. You indicated on Form 1023 that you do not influence legislation or plan to influence legislation. However, information on your website stated that in January 2004, Cooperative Roots endorsed Measure I, which passed by a landslide in Berkeley elections. Please explain the discrepancy in your response on Form 1023 and the information shown on your web site.

Revenue Ruling 71-395, 1971-2 CB 228

Section 501.--Exemption From Tax on Corporations, Certain Trusts, etc.

26 CFR 1.501(c)(3)-1: Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.
A cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under section 501(c)(3) of the Code.

[Text]

A question asked the Internal Revenue Service is whether a cooperative art gallery that exhibits and sells its members' works may be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The gallery was formed and is operated by a group of approximately 50 artists for the purposes of exhibiting and selling their works. Additional artists are admitted to membership by approval of the existing members.

The gallery is open to the public six days a week. No admission is charged. Works of the member artists are exhibited and offered for sale. A panel chosen by the members selects those works for exhibition that in its opinion meet certain minimal artistic standards. Special showings by individual members are also held on a rotating basis. All works may be purchased by the public and many may be rented. The gallery retains a commission from sales and rental sufficient to cover the cost of operating the gallery. Any deficits that occur are covered by special assessments of the members.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations that are organized and operated exclusively for educational purposes. Section 1.501(c)(3)-1(d)(3)(ii) of the Income Tax Regulations states that museums and similar organizations are examples of exempt educational organizations.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization may not be exempt if it is operated for the benefit of private individuals.

The cooperative gallery in this case is engaged in showing and selling only the works of its own members and is a vehicle for advancing their careers and promoting the sale of their work. It serves the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

Accordingly, it is held that the organization is not organized and operated exclusively in furtherance of exempt purposes and is not exempt under the provisions of section 501(c)(3) of the Code.

REV-RUL, Rev. Rul. 69-175, **Revenue Ruling 69-175**, 1969-1 CB 149, (Jan. 01, 1969), Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.
Revenue Ruling 69-175, 1969-1 CB 149

Section 501.--Exemption From Tax on Corporations, Certain Trusts, Etc.

26 CFR 1.501(c)(3)-1: Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.
A nonprofit organization, formed by parents of pupils attending a private school, that provides school bus transportation for its members' children serves a private rather than a public interest and does not qualify for exemption under section 501(c)(3) of the Code.

[Text]

Advice has been requested whether under the circumstances described below a nonprofit organization created to provide bus transportation for certain school children is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The organization was formed by the parents of pupils attending a private school exempt from Federal income tax under section 501(c)(3) of the Code. All control over the organization rests in the parents. The organization provides bus transportation to and from the school for those children whose parents belong to the organization. Parents must pay an initial family fee and an additional annual charge for each child. The organization's income approximately equals the expenses involved in its operations.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable or educational purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for any exempt purpose set forth in section 501(c)(3) of the Code unless it serves a public rather than a private interest.

When a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children, under the circumstances described, the organization enables

the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves a private rather than public interest. Accordingly, it is not exempt from Federal income tax under section 501(c)(3) of the Code.

CR PROJECT
3090 KING STREET.
BERKELEY, CA 94703

July 28, 2006

VIA FACSIMILE TRANSMISSION
AND U.S. MAIL

Department of the Treasury
Internal Revenue Service
Exempt Organizations
Attn. Deborah James
Room 1400 Group 7828
31 Hopkins Plaza
Baltimore, MD 21201

Re: CR Project Exemption Application (EIN #20-0309905)

Dear Ms. James:

This letter is in response to your letter dated June 9, 2006 and received on or about July 3, 2006, a copy of which is attached hereto as Exhibit A. This letter shall respond to each point in your letter using the numbering provided in your letter.

1. The exclusive purpose of the corporation is to provide affordable housing to persons with low and very income using a model that includes some cooperative ideas and principals but which is not a legal cooperative as that term is defined in California or federal law. In both *Lake Forest, Inc. v. Commissioner* (1962) 305 F.2d 814 and Revenue Ruling 74-17, 1974-1 CB 130, the organizations involved persons who had a legal ownership interest in their units either as condominiums (Rev. Ruling) or as share owners in a cooperative corporation (*Lake Forest.*) Those situations are thus distinguishable from the operation of CR Project, in which no low-income resident owns any equitable interest in the corporation or any legal interest in any real property.

California law provides for cooperative corporations (see Corp. Code Sec. 12200 et seq.). CR Project is not organized under California's cooperative corporation law, but is instead organized under California's public benefit corporations law (see Corp. Code Sec. 5000, et seq.).

CR Project's operations fall within the safe harbor provisions of Rev Proc. 96-32, 1996-1 C.B. 717, 1996-20 I.R. B. 14 because CR Project exists to rent affordable housing units to persons who meet the income limits established in Rev Proc. 96-32. (See Rev Proc. 96-32 Section 3.)

CR Project's responses to Form 1023 Schedule F describe the income means testing that the corporation applies to potential residents in affordable housing provided by the corporation. While CR Project's responses to Form 1023 discuss the term "cooperative", this term is not used to indicate that low-income residents who

lease housing from the corporation have any ownership interest in CR Project or their units. Instead, the use of the term "cooperative" indicates that residents share kitchen and bathroom facilities and share meals at properties managed or owned by the corporation. The use of the term "cooperative" is also intended to describe a model of affordable housing in which residents participate in the management and operation of the houses they share with other residents.

Unlike the situation in the *Lake Forest, Inc. v. Commissioner* (1962) 305 F.2d 814 and Revenue Ruling 74-17, 1974-1 CB 130, CR Project exists to provide affordable housing to persons with incomes within the safe harbor described in Rev Proc. 96-32. In *Lake Forest, Inc. v. Commissioner* (1962) 305 F.2d 814 and Revenue Ruling 74-17, 1974-1 CB 130, the residents were not means tested nor did those organizations exist to provide affordable housing to individuals who were means tested. Thus, CR Project's operations are charitable as that term is defined in IRC 501(c)(3) because its operations are aimed at "[r]elief of the poor and distressed or of the underprivileged." (Reg. Sec. 1.501(c)(3)-1(d)(2).) (See also Rev. Rul 70-585, 1970-2 C.B. 115 Situation 1-3.)

2. A copy of the title to the property at 3090 King Street is attached hereto as Exhibit B. CR Project believe a copy of this same deed was attached to the original Form 1023 as Exhibit I. There is no relationship between Kenneth R. Mahaffey and Carol Hermanson and the organization or any of its officers.

3. A copy of the loan agreements with the Parker Street Foundation are attached hereto as Exhibit C.

4. A copy of a resolution of the board of directors relating to affordability of housing leased by CR Project is attached hereto as Exhibit D.

5. As of the date of this letter, the officers of the corporation are as follows:

Office	Office Holder	Resident at housing owned by CR Project?
CEO	Sonya Hammons	No
CFO	[vacant as of 7/28/06]	--
Secretary	Crow Bolt	Yes

None of the officers are compensated for their service as an officer. The qualifications of each officer are as follows:

Sonya Hammons has been involved in research and development of affordable housing projects in New York, California and Brazil for the past seven years. She has a degree in regional development from the Geography department at UC Berkeley and is active in regional low-income food and housing projects.

Crow Bolt has previously served as the Secretary for a number of for-profit and non-profit corporations and organizations.

6. The website is operational. A copy of material included in the website is attached hereto as Exhibit E.

7. As stated above, the corporation's exclusive purpose is to provide affordable housing to income qualified individuals. The corporation provides common facilities which some of its tenants have used to provide free workshops to members of the public. However, these workshops have not been provided by the corporation as such nor have any corporate funds been used to provide these workshops. Workshops organized and conducted by the residents to date have included informal workshops on gardening, bicycles and ecological sustainability. No literature regarding these informal, tenant conducted workshops is available.

CR Project's response to Form 1023 Part IV discussed a number of community services that the response erroneously stated would be provided by CR Project. This response was in error. In fact, all of the "community services" discussed in the response will not be provided by the CR Project as such, nor shall CR Project use any of its funds to provide these services. Tenants renting units at properties owned by CR Project shall be free, as individuals, to invite the public to attend workshops, and as stated above, individual tenants have in fact invited the public to attend workshops. Tenants shall also be free to conduct workshops and skillsharing events with other tenants. CR Project requests that in reviewing its responses to From 1023, the Service accept this clarification of its previous response.

8. The corporation has not made any grant requests nor has it published a member handbook. A copy of a recent advertisement for tenants is attached hereto as Exhibit F.

9. A copy of the rental rate for each unit at the corporation's properties is attached hereto as Exhibit G. The corporation does not have a sliding scale for rent charges. Tenants are required to pay their rent on time pursuant to the lease they sign with the corporation. The corporation can pursue eviction against residents who fail to pay rent after serving a three-day notice pursuant to California law, provided, however, that to date, the corporation has not evicted any resident. The corporation has not adopted a policy regarding non-payment other than the remedy the corporation retains under its lease with residents.

Please let me know if you have any questions regarding the foregoing or if you require any additional information.

Sincerely,

Sonya Hammons
CEO, CR Project

Encl.

DO NOT DESTROY THIS NOTE:

When paid, this Note and the Deed of Trust securing same, must be surrendered to Trustee for cancellation and retention before reconveyance of the Deed of Trust will be made.

INSTALLMENT NOTE
(INTEREST ONLY PAYMENTS)

$184,174.96

FEBRUARY 11, 2005
File No. **0102-220668ala**

For value received, all of the undersigned (collectively referred to as "Maker"), jointly and severally promise to pay to **Parker Street Foundation, A California Public Benefit Corporation** or order ("Holder"), at **2330 Parker Street, Berkeley, CA 94704** or as directed otherwise in writing by Holder, the principal sum of **one hundred eighty four thousand one hundred seventy four** Dollars (**$184,174.96**), with interest from the **FOURTEENTH** day of **FEBRUARY, 2005** on the amounts of principal remaining from time to time unpaid, until said principal sum is paid in full, at the rate of **SEVEN** per cent (**7.0000%**) per annum, payable in monthly installments equal to interest only or more commencing on the **1ST** day of each and every **Month,** beginning on the **1ST** day of **APRIL, 2005**, and continuing until the **1ST** day of **MARCH, 2010**, at which time the entire unpaid principal and any accrued interest is all due and payable in full.

If the Maker shall sell, convey or alienate the property as described in the Deed of Trust (defined below), or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Holder being first had and obtained, Holder shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

If this Note requires a balloon payment, this Note may be subject to California Civil Code Section 2966 which provides that the Holder of this Note shall give written notice to the Maker as the trustor of the Deed of Trust, or his/her successor in interest, of prescribed information at least ninety (90) and not more than one hundred and fifty (150) days before any balloon payment is due.

All payments under this Note shall be made in lawful money of the United States of America. Payments shall be credited first against any costs or expenses due under this Note, then to accrued interest, and finally to principal. The principal amount of this Note may be prepaid, in whole or in part, at any time without penalty, in which event, interest shall cease to accrue on the portion of the principal so prepaid. Should any amount under this Note not be paid when due, then all remaining principal and accrued interest shall become immediately due and payable at the option of Holder. In no event shall the interest rate charged under this Note exceed the maximum rate permitted under applicable law.

Continued on Page 2

Continued from Page 1

INSTALLMENT NOTE
(INTEREST ONLY PAYMENTS)

$184,174.96

FEBRUARY 11, 2005
File No. **0102-220668ala**

Should suit on this Note or foreclosure of the Deed of Trust (defined below) be commenced, Maker agrees to pay the costs of foreclosure and such additional sums as a court may adjudge reasonable as attorney's fees in any suit.

This Note shall be construed in accordance with the laws of the State of California. Any alteration, change or modification of or to this Note, in order to become effective, shall be made by written instrument executed by both Maker and Holder.

This Note is secured by a deed of trust of even date herewith to **First American Title Company, a California corporation,** as trustee ("Deed of Trust").

THIS IS A LEGAL DOCUMENT. PLEASE READ IT CAREFULLY.
IT IS RECOMMENDED THAT YOU CONSULT YOUR LEGAL COUNSEL
BEFORE EXECUTING OR ACCEPTING THIS DOCUMENT.

"Maker"

Cooperative Roots Project, A California
Public Benefit Corporation

DO NOT DESTROY THIS NOTE:

When paid, this Note and the Deed of Trust securing same, must be surrendered to Trustee for cancellation and retention before reconveyance of the Deed of Trust will be made.

INSTALLMENT NOTE

(INTEREST INCLUDED IN INSTALLMENT PAYMENT)

$293,000.00

February 11, 2005

File No. **0102-220668ala**

For value received, all of the undersigned (collectively referred to as "Maker"), jointly and severally promise to pay to **Parker Street Foundation, A California Public Benefit Corporation** or order ("Holder"), at **2330 Parker Street, Berkeley, CA 94704** or as directed otherwise in writing by Holder, the principal sum of **two hundred ninety three thousand** Dollars (**$293,000.00**), with interest from the 14th day of **February, 2005** on the amounts of principal remaining from time to time unpaid, until said principal sum is paid in full, at the rate of **Six** per cent (**6.0000%**) per annum. Maker shall pay in equal **Monthly** installments of **one thousand seven hundred fifty six and 68/100** Dollars (**$1,756.68**) or more on the same day each and every **Month**, beginning on the 1st day of **April, 2005**, and continuing until the 1st day of **March, 2035**, at which time the entire unpaid principal and any accrued interest is all due and payable in full.

If the Maker shall sell, convey or alienate the property as described in the Deed of Trust (defined below), or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Holder being first had and obtained, Holder shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

If this Note requires a balloon payment, this Note may be subject to California Civil Code Section 2966 which provides that the Holder of this Note shall give written notice to the Maker as the trustor of the Deed of Trust, or his/her successor in interest, of prescribed information at least ninety (90) and not more than one hundred and fifty (150) days before any balloon payment is due.

All payments under this Note shall be made in lawful money of the United States of America. Payments shall be credited first against any costs or expenses due under this Note, then to accrued interest, and finally to principal. The principal amount of this Note may be prepaid, in whole or in part, at any time without penalty, in which event, interest shall cease to accrue on the portion of the principal so prepaid. Should any amount under this Note not be paid when due, then all remaining principal and accrued interest shall become immediately due and payable at the option of Holder. In no event shall the interest rate charged under this Note exceed the maximum rate permitted under applicable law.

Continued on Page 2

INSTALLMENT NOTE
(INTEREST INCLUDED IN INSTALLMENT PAYMENT)

$293,000.00

February 11, 2005
File No. **0102-220668ala**

Should suit on this Note or foreclosure of the Deed of Trust (defined below) be commenced, Maker agrees to pay the costs of foreclosure and such additional sums as a court may adjudge reasonable as attorney's fees in any suit.

This Note shall be construed in accordance with the laws of the State of California. Any alteration, change or modification of or to this Note, in order to become effective, shall be made by written instrument executed by both Maker and Holder.

This Note is secured by a deed of trust of even date herewith to **First American Title Company, a California corporation**, as trustee ("Deed of Trust").

THIS IS A LEGAL DOCUMENT. PLEASE READ IT CAREFULLY.
IT IS RECOMMENDED THAT YOU CONSULT YOUR LEGAL COUNSEL
BEFORE EXECUTING OR ACCEPTING THIS DOCUMENT.

"Maker"

C.R.
~~Cooperative Roots~~ Project, A California
Public Benefit Corporation

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When paid, this Note and the Deed of Trust securing same, must be surrendered to Trustee for cancellation and retention before reconveyance of the Deed of Trust will be made.

INSTALLMENT NOTE

(INTEREST INCLUDED IN INSTALLMENT PAYMENT)

$315,000.00 **February 11, 2005**

File No. **0102-220668ala**

For value received, all of the undersigned (collectively referred to as "Maker"), jointly and severally promise to pay to **Kenneth R. Mahaffey and Carol Hermanson** or order ("Holder"), at **P O Box 3417, Berkeley, CA 94703** or as directed otherwise in writing by Holder, the principal sum of **three hundred fifteen thousand** Dollars (**$315,000.00**), with interest from the 14th day of **February, 2005** on the amounts of principal remaining from time to time unpaid, until said principal sum is paid in full, at the rate of **Six** per cent (**6.0000%**) per annum. Maker shall pay in equal **Monthly** installments of **one thousand eight hundred eighty eight and 58/100** Dollars (**$1,888.58**) or more on the same day each and every **Month**, beginning on the 1st day of **April, 2005**, and continuing until the 1st day of **March, 2035**, at which time the entire unpaid principal and any accrued interest is all due and payable in full.

If the Maker shall sell, convey or alienate the property as described in the Deed of Trust (defined below), or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Holder being first had and obtained, Holder shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

If this Note requires a balloon payment, this Note may be subject to California Civil Code Section 2966 which provides that the Holder of this Note shall give written notice to the Maker as the trustor of the Deed of Trust, or his/her successor in interest, of prescribed information at least ninety (90) and not more than one hundred and fifty (150) days before any balloon payment is due.

All payments under this Note shall be made in lawful money of the United States of America. Payments shall be credited first against any costs or expenses due under this Note, then to accrued interest, and finally to principal. The principal amount of this Note may be prepaid, in whole or in part, at any time without penalty, in which event, interest shall cease to accrue on the portion of the principal so prepaid. Should any amount under this Note not be paid when due, then all remaining principal and accrued interest shall become immediately due and payable at the option of Holder. In no event shall the interest rate charged under this Note exceed the maximum rate permitted under applicable law.

Continued on Page 2

Continued from Page 1

INSTALLMENT NOTE
(INTEREST INCLUDED IN INSTALLMENT PAYMENT)

$315,000.00

February 11, 2005
File No. **0102-220668ala**

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This Note shall be construed in accordance with the laws of the State of California. Any alteration, change or modification of or to this Note, in order to become effective, shall be made by written instrument executed by both Maker and Holder.

This Note is secured by a deed of trust of even date herewith to **First American Title Company, a California corporation**, as trustee ("Deed of Trust").

THIS IS A LEGAL DOCUMENT. PLEASE READ IT CAREFULLY.
IT IS RECOMMENDED THAT YOU CONSULT YOUR LEGAL COUNSEL
BEFORE EXECUTING OR ACCEPTING THIS DOCUMENT.

"Maker"

C.R.
~~Cooperative Roots~~ Project, A California
Public Benefit Corporation

Ann Joseph Wilensky Bizzelin

Andrew Scott Rhoades

For value received we hereby assign this note to the Parker Street Foundation, 2330 Parker Street, Berkeley CA, 94704.

Kenneth R Mahaffey 3/

Carol Hermanson 3/

Exhibit G
CR Project (EIN #20-0309905)

3090 King Street Rent Roll as of 7/1/06

Unit #	Monthly Rent
1	$337.00
2	$337.00
3	$618.00
4	$618.00
5	$618.00
6	$524.00
7	$524.00
8	$524.00
9	$618.00
10	$524.00
11	$618.00
12	$524.00
13	$431.00
14	$431.00
15	$337.00
16	$524.00
17	$431.00

3088 King Street Rent Roll as of 5/16/06

Unit #	Monthly Rent
1	$500.00
2	$500.00
3	$500.00
4	$450.00
5	$350.00
6	$525.00
7	$450.00
9	$375.00
10	$400.00

MINUTES OF THE SPECIAL MEETING OF

THE DIRECTORS OF

C.R. PROJECT

A CALIFORNIA PUBLIC BENEFIT CORPORATION

A Special Meeting of the Board of Directors of C.R. PROJECT, a California Public Benefit Corporation, (the "Corporation") was held at Berkeley, California at 7:30 p.m. on July 12, 2004, pursuant to written notice. All Directors were present: Lance Olsen, Sigal Shoham, Ari Bigeleisen, Adrian Wilson and Zack Norwood. The following items were discussed:

1. RESOLVED that the Corporation shall adopt the following criteria and income guidelines when considering applicants for housing in any property managed by the corporation as affordable housing:

A. At least Eighty percent (80%) of the units at property managed by the corporation will be occupied by residents with gross annual incomes that qualify as low-income for the Oakland area; and at least 20 percent of the units will be occupied by residents that also have gross annual earnings below the very low-income limit for the Oakland area, as defined in this Resolution.

B. When a vacancy occurs at property managed by the corporation, the Corporation shall only accept applicants to fill the vacancy who have a gross annual income that qualifies as very low-income, provided, however, that if at the time of the vacancy at least 20 percent (20%) of the units at property managed by the corporation are then occupied by persons who qualify as very low-income, then the Corporation may select an applicant who qualifies as either very-low income or low income, and provided, however, that if at the time of the vacancy at least Eighty percent (80%) of the units at property managed by the corporation are occupied by persons with incomes below the limit for low income, then the Corporation may select an applicant who qualifies as either very low income, low income, or any other applicant.

The corporation shall use the most recently updated definition of "low income" and "very-low income" provided by the Department of Housing and Urban Development's Income Limits for Low and Very Low-Income Families publication for the Oakland area, which define "very low-income" as 50 percent of an area's median income and "low-income" as 60 percent of an area's median income.

2. RESOLVED that property managed or owned by the Corporation shall be actually occupied by poor and distressed residents such that all residents shall meet the income criteria discussed in resolution 1, above.

3. RESOLVED that the Corporation hereby adopts the rental policy attached hereto as Exhibit A to ensure that the housing provided by the corporation shall be affordable to low income persons.

Exhibit A

Rental Affordability Policy

It shall be the policy of the corporation that all rents charged to low or very low income people renting units from the corporation shall be affordable to those people. Specifically, the corporation shall not charge a person who qualifies as "very low income" as defined below rent which is more than Thirty percent (30%) of the highest income limit for a very low income person, nor shall the corporation charge a person who qualifies as "low income" as defined below rent which is more than Thirty percent (30%) of the highest income limit for a low income person. The corporation shall additionally not charge a low income or very low income person more than the cost of providing their housing unit. The term "cost" shall mean the sum of all costs incurred by the corporation for providing a given unit of housing, including but not limited to the financing charges, insurance, taxes, reserve fund, maintenance, administration and utilities. The terms "low income" and "very low income" shall have the meaning defined in the most recently updated definition of "low income" and "very-low income" provided by the Department of Housing and Urban Development's Income Limits for Low and Very Low-Income Families publication for the Oakland area, which define "very low-income" as 50 percent of an area's median income and "low-income" as 60 percent of an area's median income.

Adopted July 12, 2004.

I certify that the foregoing is the true and correct policy of the corporation as adopted by the corporation on the date herein above written.

Ari Bigeleisen, Secretary

Exhibit F

Rooms available, in lovely home near ASHBY BART

- The rooms available include two beautiful, large rooms in a big house. There is also a rustic but beautiful cabin in a vibrant yard. Prices range from 340-610 a month.
-Each house resident is charged an additional 150$/month for great bulk food and utilities.

The Facts: The 17-bedroom house is near Ashby BART in Berkeley – huge 9800 sq ft property. Room rates depend on the room, 340-610. The project is a 17-person shared house operated by a nonprofit corporation whose mission is to build affordable, sustainable group housing that does good for its community. Residents cooperate in the management and operation of the house and the non-profit corporation. The rooms are only available to individuals with incomes that qualify - if you are an individual (ie, unmarried and without children), you can apply for a room if your income is less than $46,350 per year. Income for families is slightly higher. When the non-profit bought the house two years ago, it was a fixer-upper and since then has more than doubled in its usable square footage. Residents at the house share chores, cook and eat together and have weekly house council meetings. Residents grow food in the abundant gardens and what can't be grow, is purchased in bulk and at the farmer's market. Residents each pay $150/month for food and utilities, and eat well. Residents compost, build with salvaged and recycled materials when possible and THE HOUSE IS COMPLETELY ENERGY SELF-SUFFICIENT due to the photovoltaic solar arrays on the roof. The house is across the street from a magnet elementary school and its next-door neighbor is a vibrant gospel-music community church. What's Great About This Place:

The PEOPLE: The residents are really bright – this sounds arrogant but it's true and important. The residents are creative – In addition to art projects, the entire house is a creation of collective vision – everything is a palate, everything can be made more beautiful or interesting. The residents are self-reflective and sensitive – they actually listen to each other and value each voice. The residents are fun – they like to do yoga on the roof, run around in the park, have spontaneous dance parties The residents are like family – they support each other, listen to each other's joys and problems and try to foster a sense of family and a sense of home.

The PROPERTY: The lot has plum trees, apple trees, pear trees, cherry trees, fig trees, asian pear trees, and pomegranate trees. There is a redwood hot tub. There is a lovely brown dog named Gaia who loves attention and walks. There is so so much space to garden and grow food and herbs. There is a sunny roof-deck and a few other decks, porches and hidden nooks.

The PURPOSE: When you rent from a private landlord, you are paying extra for a landlord's profit and you do not have free reign to make the property whatever you want it to be. Your roots don't go down deeply because the situation feels temporary. The non-profit allows residents to participate in the management of their homes. The non-profit's mission statement: CR Project builds sustainable, affordable housing, empowers people to create democratic cooperatives, and strengthens local communities through shared resources and education.

The FEELINGS: We believe that when you have a community that cares about you and you have a safe-haven place to call home, you take those feelings with you wherever you go and whatever you do – in a day's work at a job, in a walk around the block, in a three month trek in Nepal. You act with more confidence and solidness because you have a solid home base – people waiting at home for you with warm food and love. This may sound cheesy but it's actually one of the best feelings a person can have. One of the last frontiers is the kitchen- It is being redesigned to serve 17 people, and hence is a bit cluttered and mildly messy, even with daily cleaning. However, while not currently ideal, the kitchen continues to be the main hangout and social center, and turns out wonderful, healthy, collective meals most evenings. Another frontier which is a work in progress is the house meeting process. The meetings are run by consensus, and so a motion does not pass unless everyone agrees to it. This is done by finding compromises that attempt to meet everyone's needs. However, the net effect can be long council meetings and long discussions. This process is a source of frustration for some community members. We are working to improve it, but have a ways to go. So, that is a bit about us.

FOR MORE INFORMATION OR TO VISIT, email us some info about yourself: Name, and what is your story? How does this situation sound appealing to you? Which parts and Why?

JESSE D. PALMER
ATTORNEY AT LAW
PO BOX 3885, BERKELEY, CA 94703
(510) 549-1436

July 24, 2006

VIA FACSIMILE TRANSMISSION

Department of the Treasury
Internal Revenue Service
Exempt Organizations
Attn. Deborah James
Room 1400 Group 7828
31 Hopkins Plaza
Baltimore, MD 21201

Re: CR Project (EIN #20-0309905)

Dear Ms. James:

This letter is confirm our telephone conversation today in which we identified August 1, 2006 as the extended response date for your letter dated June 9, 2006 and received by my client in early July, 2006.

Please let me know if you have any questions regarding the foregoing or if you require any additional information.

Sincerely,

Jesse D. Palmer

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Date: June 9, 2006

Department of the Treasury
~~P.O. Box 2508~~
~~Cincinnati, Ohio 45201~~

Employer Identification Number:
20-0309905
Person to Contact - Group #:
Miss D. James - 7881
ID# 52423
Contact Telephone Numbers:
410-962-9534 Phone
410-962-8193 Fax
Response Due Date:
June 30, 2006

C R Project
3090 King St.
Berkeley, CA 94703

Dear Sir or Madam:

Before we can determine whether your organization is exempt from Federal income tax, we must have enough information to show that you have met all legal requirements. You did not include the information needed to make that determination on your Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

To help us determine whether your organization is exempt from Federal income tax, please send us the requested information by the above date. We can then complete our review of your application.

If we do not hear from you within that time, we will assume you do not want us to consider the matter further and will close your case. In that event, as required by Code section 6104(c), we will notify the appropriate state officials that, based on the information we have, we cannot recognize you as an organization of the kind described in Code section 501(c)(3). As a result, the Internal Revenue Service will treat your organization as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new Form 1023.

In addition, if you do not provide the requested information in a timely manner, we will consider that you have not taken all reasonable steps to secure the determination you requested. Under Code section 7428(b)(2), your not taking all reasonable steps in a timely manner to secure the determination may be considered as failure to exhaust administrative remedies available to you within the Service. Therefore, you may lose your rights to a declaratory judgment under Code section 7428.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,
Deborah James
Deborah James
Exempt Organizations Specialist

Enclosure

Letter 1312 (DO)

Name C R Project
FIN 20-0309905

Note: Your response to this letter must be submitted over the signature of an authorized person or of an officer whose name is listed on the application.

PLEASE ATTACH A COPY OF THIS LETTER TO ALL CORRESPONDENCE.

Additional Information Requested:

1. You stated that you were formed to provide cooperative housing to low and very low-income individuals. However, a cooperative housing corporation normally does not qualify for exemption since it normally is an economic and private undertaking for the benefit of its members. See Lake Forest, Inc. v. Commissioner., 305F.2d 814(4th Cir. 1962) and Revenue Ruling 74-17, 1974-1 CB 130, attached. Please explain how your organization differs from the organization described in this court case.

2. Submit a copy of the title of the property located at 3090 King Street. What is Kenneth R. Mahaffey and Carol Hermanson relationship to the organization and its officers? Explain.

3. Submit a copy of the loan agreement with the Parker Street Foundation.

4. Submit copies of resolutions adopted by your Board of Directors regarding your housing being affordable to low-income residents.

5. State the qualifications of your officers. Are any of the officers tenants? Explain.

6. Is your website operational? If so, provide copies of material included in the website.

7. Provide details regarding the community services including workshops you provide. Who are the instructors? What are the fees? What are the fees based on? Who can attend? Submit literature regarding these services.

8. Submit copies of any advertisements, member handbook, and grant requests?

9. Submit a cooperative fee schedule for the tenants. Do you have a sliding scale? Explain. What is your procedure regarding tenants who become unable to pay?

Name C R Project
FIN 20-0309905

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

US Mail:

Internal Revenue Service
Exempt Organizations
P.O. Box 13163
Baltimore, MD 21203
ATT: Deborah James
Room 1400
Group 7828

Street Address:

Internal Revenue Service
Exempt Organizations
31 Hopkins Plaza
Baltimore, MD 21201
ATT: Deborah James
Room 1400
Group 7828

REV-RUL, Revenue Ruling 74-17, **Revenue Ruling 74-17**, 1974-1 CB 130, (Jan. 01, 1974), **Condominium housing association.**
Revenue Ruling 74-17, 1974-1 CB 130

Section 501.--Exemption from Tax on Corporations, Certain Trusts, etc.

26 CFR 1.501(c)(4)-1: Civic organizations and local associations of employees.

[IRS Headnote] Condominium housing association.--
An organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code.

[Text]

Advice has been requested whether the nonprofit organization described below qualifies for exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code of 1954.

The organization is an association that was formed by the unit owners of a condominium housing project and is operated to provide for the management, maintenance, and care of the common areas of the project. Its income is from membership assessments and its disbursements are for normal operating expenses.

A condominium is defined by statute in the state in which the organization is located as an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office, or store. The statute provides that the owner of a condominium unit individually owns the interior surfaces of the perimeter walls, floors, ceilings, wndows, and doors of his unit.

The statute further provides that the common areas of the condominium property are owned by the unit owners as tenants in common, in equal shares, one for each unit. It lists the following elements as common areas of condominium property: bearing walls, columns, floors, central heating, central refrigeration, and central air conditioning equipment, reservoirs, tanks, pumps, and other central services, pipes, ducts, flues, chutes, conducts, wires, and other utility installation, wherever located, except the outlets thereof when located within the unit. This statutory definition implicitly includes common areas normally forming a part of a residential development such as streets, sidewalks, parks, and open areas.

The statute also imposes a requirement on the owner of the project to make and record a declaration of project restrictions and servitudes prior to the conveyance of any condominium therein, such restrictions to bind all owners of condominiums in the

project. The statute states that such servitudes may provide for the management of the project by either the condominium owners, a board of directors elected by the owners, or a management agent elected by the owners or the board or named in the declaration.

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(3)-1(a)(2)(i) of the Income Tax Regulations provides 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 agout civic betterments and social improvements.

In *Commissioner v. Lake Forest, Inc.*, 305 F. 2d 814 (4th Cir. 1962), the court held that a cooperative housing corporation was not exempt as a social welfare organization under section 501(c)(4) of the Code since its activities were of the nature of an economic and private cooperative undertaking.

Rev. Rul. 65-201, 1962-5 C.B. 170, holds that a cooperative organization operating and maintaining a housing development and providing housing facilities does not qualify for exemption from Federal income tax under section 501(c)(12), or any other provision of the Code.

Rev. Rul. 69-280, 1969-1 C.B. 152, holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt from Federal income tax under section 501(c)(4) of the Code.

By virtue of the essential nature and structure of a condominium system of ownership, 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 in the condominium. In addition, condominium ownership necessarily involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners.

Since the organization's activities are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare. Accordingly, it does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.

TCM, [CCH Dec. 25,957(M)] , **Lake Forest, Inc. v. Commissioner**, [Exempt organizations: Cooperative housing corporation: Sale v. lease: Depreciation: Principal payments: Patronage refunds: State taxes: Taxable status.]--, (Feb. 13, 1963)

[CCH Dec. 25,957(M)]
Lake Forest, Inc. v. Commissioner

Docket Nos. 77061, 81891, 22 TCM 156, TC Memo. 1963-39, Filed February 13, 1963

[1939 Code Secs. 23, 54, 101(12), 112(n)(5), 113(a), 122, 272(g) and 275--similar to 1954 Code Secs. 118, 167(a), 172, 216, 362(a) and 6501(g)]

[Exempt organizations: Cooperative housing corporation: Sale v. lease: Depreciation: Principal payments: Patronage refunds: State taxes: Taxable status.]--1. Except where section 302(b) of the Revenue Act of 1950 applies, exempt organization information returns are not "returns" for statute of limitations purposes under the 1939 Code.2. Petitioner's claim to exemption under section 101(8), 1939 Code, failed because it was not a "social welfare organization." *Held:* section 302(b) of the Revenue Act of 1950 is inapplicable.3. Petitioner, a cooperative housing corporation, *held* to have leased, not sold, its dwelling units to its members.4. *Held:* petitioner's dwelling units were depreciable property in its hands, since it held them for the production of income.5. Principal payments to petitioner by its members *held:* contributions to capital and not income to petitioner.6. Patronage refunds qualifying as such under the tests in *Pomeroy Cooperative Grain Co.* [Dec. 23,302], 31 T. C. 674 (1958), affd. in part [61-1 USTC ¶9316] 288 F. 2d 326 (C. A. 8, 1961):(a) Need not be payable in cash:(b) May arise from additions to funded reserves for anticipated expenses; and(c) Need not, during the years before the Court, have been allocated by the due date of the payor's income tax return.7. Additional state income taxes and interest due on account of any deficiency found here are not deductible by petitioner, an accrual basis taxpayer, in the years to which the additional taxes relate. *Globe Tool & Die Manufacturing Co.* [Dec. 23,732], 32 T. C. 1139 (1959).8. Petitioner's taxable status prior to the years before the Court *held:* the same as that determined for the years before the Court. A net operating loss incurred in the earlier period may be carried forward.

Wallace C. Murchison, Esq., Carolina Power & Light Bldg., Wilmington, N. C., for the petitioner. Richard C. Forman, Esq., for the respondent.

Supplemental Memorandum Findings of Fact and Opinion

TRAIN, Judge:

In 1961 we held petitioner exempt from Federal income taxation as a "social welfare" organization under sections 101(8) of the 1939 Code and 501(c)(4) of the 1954 Code, [Dec. 24,902], 36 T. C. 510. Petitioner' alternate contention, that it was emempt as a "like organization" under sections 101(10) of the 1939 Code and 501(c)(12) of the 1954 Code, was not reached by this Court.

The mandate of the Court of Appeals for the Fourth Circuit reversed that decision and remanded for proceedings consistent with its opinion, reported at [62-2 USTC ¶9602], 305 F. 2d 814 (1962). In the course of that opinion the Court of Appeals held petitioner not exempt as a social welfare organization and stated "the argument for exemption of Lake Forest, Inc., as a 'like organization' * * * is altogether meritless." *Id.* at 820. We were directed to determine "the other issues presented by the petition of Lake Forest, Inc., and not reached by the Tax Court." *Idem.*

The issues to be decided under that mandate are:

(1) Whether the statute of limitations bars assessment of deficiencies for petitioner's taxable years 1948 through 1950; [1]

(2) Whether petitioner may deduct depreciation on certain buildings and equipment;

(3) Whether the principal payments made to petitioner by its members under their mutual ownership contracts were capital contributions or income to petitioner;

(4) Whether the book credits allocated by petitioner to its members for petitioner's taxable years 1955 and 1956 were properly excluded from gross income;

(5) Whether the additional North Carolina income taxes and interest which would be owed for any year in issue for which a deficiency is determined in this proceeding are deductible for such year; and

(6) Whether petitioner was exempt from taxation for the year of April 1, 1947, to March 31, 1948, and if not, whether it sustained a net operating loss in such year which it may carry forward to subsequent years in issue.

Findings of Fact

Our findings of fact are set forth in [Dec. 24,902] 36 T. C. at 511-534. We will here make only those additional findings relevant to our decision in this proceeding. As in our earlier opinion, the Federal Public Housing Authority and its successor, the Public Housing Administration, will be referred to hereinafter as "PHA."

Petitioner filed timely Form 990 exempt organization information returns for its taxable year 1948 through 1950. On September 18, 1952, petitioner filed Form 1120 corporate income tax returns for the period April 1, 1947--June 30, 1948, and for its taxable years 1949 and 1950. Waivers of the statute of limitations for petitioner's taxable years 1948 through 1950 were first executed on June 20, 1955. The deficiency notice for those years was mailed on July 7, 1958, which the then currently effective extention of the waiver periods.

Petitioner paid real estate taxes on the land, dwellings, and other buildings in the project. Petitioner paid personal property taxes on the heaters, stoves, and refrigerators, among other things in those buildings. Petitioner's members did not pay such taxes on those items.

A departing member who left before the end of petitioner's fiscal year did not accumulate book credits for that part of the year for which he was a member. If petitioner purchased the departing member's interest in petitioner and thereafter transferred it to a successor member, the successor accumulated book credits only for that part of the year during which the successor was a member. The book credits thus forfeited by the departing member were allocated to the remaining members.

The purchase and sales contract between petitioner and the PHA provided for the interm period April 1, 1947--March 31, 1948, in relevant part as follows:

> Article IV Interim Period. On April 1, 1947, and for the interim period between such date and either date of delivery of the conveyance documents or the termination of the Contract as herein provided prior to the delivery of such documents, the Corporation shall assume custody and possession of the project and undertake the administration, management, operation, and maintenance of the Project.
>
> * * *
>
> (d) Disposition of Revenue: The Corporation covenants that during the interim period all revenue from the Project in excess of amounts required to pay FPHA approved operation expense shall be deposited with the FPHA. Such deposits shall be made quarterly. At the time of the delivery of the conveyance documents, the FPHA shall apply such deposits against the payment of interest on the Purchase Price for the interim period at the rate of three and one-half per centum per annum (31/2%). The balance of such deposits, if any, shall then be applied to the credit of the Corporation on the unpaid balance of the Purchase Price. In no event shall such balance be credited against the portion of the Purchase Price required to be paid by the Corporation upon delivery of the conveyance documents. If for any reason this Contract is terminated prior to delivery of the conveyance documents, then in such event the amounts deposited with the FPHA pursuant to this section shall be retained by the FPHA as rental for the Project during the interim period.
>
> (e) Non-Accrual of Property Rights: The purchases of the foregoing provisions of this Article are to enable the Corporation to obtain administration and management experience while developing its membership and perfecting its organization. Nothing in any of the foregoing provisions shall be construed as accruing or permitting or causing to accrue to the Corporation or to any of its members, any title, interest, equity, right or privilege in the Project.

(f) Termination of Contract: If at any time during the interim period the FPHA shall determine that the Corporation for any reason cannot adequately administer, manage, operate or maintain the Project, then in such event the FPHA may terminate this Contract upon ten days written notice to the Corporation. The FPHA determination in this respect shall be final and binding on the Corporation.

During the period April 1, 1947--March 31, 1948, petitioner sustained a net operating loss of $5,540.09.

Opinion

Issue (1)--Statute of Limitations

If the exempt organization information returns (Forms 990) filed by petitioner are returns for statute of limitations [2] purposes, then assessments of deficiencies for petitioner's taxable years 1948 through 1950 are barred. However, the statute has not run if the Form 1120's petitioner filed for those years in 1952 are the operative returns.

Petitioner maintains that the Form 990's it filed contain sufficient data to compute income taxes and are therefore returns for statute of limitations purposes. Alternatively, petitioner contends those Form 990's are to be treated as returns for such purposes under section 302(b) of the Revenue Act of 1950. [3]

Respondent views the Form 990's as inherently insufficient and maintains that section 302(b) of the Revenue Act of 1950 is inapplicable because exemption is denied here for reasons other than that petitioner was carrying on a trade or business for profit.

We agree with respondent as to both the nature of Form 990's and the effect of section 302(b) of the Revenue Act of 1950.

In *Automobile Club of Michigan v. Commissioner* [57-1 USTC ¶9593], 353 U. S. 180, 187-188 (1957), the Supreme Court met in the following manner the problem of Form 990's as returns for statute of limitations purposes:

> It is also argued that the Form 990 returned filed by the petitioner in compliance with §54(f) of the 1939 Code, as amended, constituted the filing of returns for the purposes of §275(a). But the Form 990 returns are merely information returns in furtherance of a congressional program to secure information useful in a determination whether legislation should be enacted to subject to taxation certain tax-exempt corporations competing with taxable corporations. [18] Those returns lack the data necessary for the computation and assessment of deficiencies and are not therefore tax returns within the contemplation of §275(a). *Cf. Commissioner v. Lane-Wells Co.* [44-1 USTC ¶9195], 321 U. S. 219.

18 H. R. Rep. No. 871, 78th Cong., 1st Sess. 24-25; S. Rep. No. 627, 78th Cong., 1st Sess. 21.

The Supreme Court's view of Congress' purpose in requiring many types of tax-exempt organizations to file information returns is well-supported by the cited committee reports.

When Congress intended to add to the functions of Form 990's that of serving as returns for statute of limitations purposes, it did so and indicated the limited circumstances in which this additional function would be present. See section 302(b), Revenue Act of 1950, *supra;* section 6501(g)(2) of the 1954 Code. [4]

On the basis of the cited committee reports and subsequent legislation [5] we conclude that the Supreme Court statement as to the limited purposes of Form 990's was an alternate holding or at least persuasive dictum. We hold that, except where Congress has provided otherwise," [6] returns filed under section 54(f) of the 1939 Code are inherently insufficient to constitute returns under section 275(a) of the 1939 Code. *Perpetual Building & Loan Association of Columbia* [Dec. 24,282], 34 T. C. 694, 716 (1960), affd. *sub nom. Cooper's Estate v. Commissioner* [61-2 USTC ¶9548], 291 F. 2d 831 (C. A. 4, 1961). See *Southern Maryland Agricultural Fair Association* [Dec. 10,816], 40 B. T. A. 549, 553 (1939).

We also agree with respondent that petitioner's alternative reliance upon section 302(b) of the Revenue Act of 1950 is misplaced. By its terms, that provision applies only if petitioner would be exempt "were it not carrying on a trade or business for profit." We do not read the Court of Appeals' denial of exempt status to petitioner [7] as being based solely upon a decision that petitioner was carrying on a trade or business for profit. Consequently, that provision is not applicable in this case. *Stevens Bros. Foundation, Inc.* [Dec. 25,708], 39 T. C. -- (October 16, 1962).

On this issue we hold for respondent.

Issue (2)--Depreciation

Respondent maintains that no deduction of depreciation is allowable to petitioner on account of dwellings and related stoves, refrigerators, heaters, and utility meters, it being his position "that petitioner had sold the dwellings and their appurtenances to its members under the mutual ownership contracts." Petitioner's depreciation deductions on account of building maintenance capital expenditures, motor scooters and automotive equipment, furniture and fixtures, a bus stop station, and a mowing machine are not disputed by respondent. Petitioner argues it owned the buildings and equipment it sought to depreciate, had capital invested therein, and used the buildings in its trade or business or held them for the production of income. [8] It maintains that it leased rather than sold the property to its members.

We agree with petitioner.

Title to this property was conveyed to petitioner by an agency of the United States Government. There is no indication that petitioner, in turn, conveyed title to its members or anyone else (except to the PHA as security under its mortgage). Petitioner, not its members, paid the appropriate real estate and personal property taxes on the property involved in this issue. Although these formal matters are not conclusive as to ownership, nevertheless they are entitled to weight in the absence of supervening considerations. In this case, the other considerations convince us that the form accurately reflects the substance of petitioner's ownership of the property.

Petitioner's members, in common with those of other housing cooperatives, are at the same time owners of petitioner and lessees of petitioner's property. Although petitioner's members may sometimes be treated, vis-a-vis outsiders, as "owners" of the housing units they occupy, [9] this characterization by other jurisdictions for other purposes is not determinative for Federal income tax purposes. See *Burnet v. Harmel* [3 USTC ¶990], 287 U. S. 103, 110 (1932); *North American Loan & Thrift Company* [Dec. 25,739], 39 T. C. -- (November 2, 1962), and authorities cited therein at pp. 10 and 11. We are concerned with the meaning of the internal revenue laws and we may gather that meaning from what Congress has done, the explanations it gave for its acts, and the decisions of the courts regarding those acts. *J. C. Penney Co.* [Dec. 25,381], 37 T. C. 1013 (1962), affd. [63-1 USTC ¶9129], -- F. 2d -- (C. A. 2, December 12, 1962).

The decisions in *Charles R. Holden* [Dec. 7895], 27 B. T. A. 530 (1933) and *Wood v. Rasquin* [37-2 USTC ¶9508], 21 F. Supp. 211 (E. D. N. Y., 1937), affd. per curiam 97 F. 2d 1023 (C. A. 2, 1938), [10] disallowed deductions by cooperative housing corporation tenant-stockholders of mortgage interest and real estate taxes paid by the corporations.

In response to the decision in *Wood v. Rasquin* (see Senate Finance Committee Hearings on Revenue Act of 1942, pp. 170, 172) the Senate inserted into the Revenue Act of 1942 a provision which became section 23(z) of the 1939 Code, allowing such deductions to tenant-stockholders of apartment housing cooperatives. The committee report (S. Rept. 1631, 77th Cong., 2d Sess., October 2, 1942, p. 51) states that "The bill provides for a new deduction in section 23(z) of taxes and interest paid or accrued by a tenant stockholder to a cooperative apartment corporation within the taxable year. * * * The general purpose of this provision is to place the tenant stockholders of a cooperative apartment in the same position as the owner of a dwelling house so far as deductions for interest and taxes are concerned." The Senate provision was agreed to without change by the Conference Committee. H. Rep. 2586, 77th Cong., 2d Sess., October 19, 1942, p. 40.

Section 318(a) of the Revenue Act of 1951 added section 112(n) to the 1939 Code deferring taxation on gain from a sale of one's principal dwelling, provided the taxpayer purchases another principal dwelling within one year from the sale. Section 112(n)(5) specifically provided that for purposes of that subsection stock in a cooperative apartment corporation would be treated as the equivalent of a residence provided that the seller or purchaser used the apartment which the stock entitled him to occupy as his principal residence.

Section 23(z) of the 1939 Code was substantially re-enacted as section 216 of the 1954 Code, except that the favorable treatment accorded tenant-sotckholders in cooperative apartment corporations was extended to tenant-stockholders "in a cooperative development of homes." H. Rept. 1337, 83d Cong., 2d Sess., March 9, 1954, p. 30; S. Rept. 1622, 83d Cong., 2d Sess., June 18, 1954, p. 36. Both committee reports (H. Rept., *supra,* p. A62; S. Rept., *supra,* p. 221) characterized the section as re-enacting:

> in revised form, section 23(z) of the 1939 Code by allowing as a deduction *not otherwise deductible* to each stockholder an amount representing his proportionate share of the total amount of taxes and interest paid to a cooperative apartment corporation. The only substantive change is that the benefits of the section are also granted to stockholders of any cooperative housing corporation meeting the tests of the section. [Italics supplied.]

Section 28 of the Revenue Act of 1962 amended section 216 of the 1954 Code by adding a provision permitting a tenant-stockholder of a cooperative housing corporation to treat some portion of his shares in the cooperative as depreciable property to the extent the tenant stockholder's dwelling was used in his trade or business or for the production of income. This provision was added to the bill on the floor of the United States Senate. The following excerpts from the brief colloquy immediately preceding adoption of this provision are significant for our purposes: (108 Cong. Rec. 17300-17301 (daily *ed.* August 31, 1962))

> Mr. SPARKMAN. Madam President, this amendment follows the policy of section 216 of the Internal Revenue Code of 1954 that a tenant-stockholder of a co-operative housing corporation be treated in a manner consistent with that of the owner of improved real property. * * *
>
> * * *
>
> As it stands now, persons who own apartments, we will say in a building that is condominium--
>
> Mr. DOUGLAS. The Puerto Rican system--horizontal slices of an apartment.
>
> Mr. SPARKMAN. That is correct. If a person rents out that kind of property, he can deduct depreciation and expenses, and so forth; but the person who owns almost the identical same thing in a cooperative housing [unit] cannot do that. This amendment puts those persons on a par with the others.
>
> * * *
>
> Mr. JAVITS. This amendment, of course, seeks to take account of the legal form of organization which represents a proprietary lease and a stock interest, which is a quite usual form of organization, for example, in New York City, for cooperatives. * * * So what this amendment would do, as the Senator has explained in response to

the Senator from Illinois, is treat property owners the same across the board, regardless of the form of legal organization of the cooperative, with respect to the availability of deductions for interest, and so forth.

* * *

Mr. SMATHERS. As I understand the amendment, it merely permits those persons who buy cooperative apartments and call them their homes to get the same advantage of the tax deduction for depreciation, and so forth, as people who own their own homes.

Mr. KERR. In the event they rent them out.

Mr. SPARKMAN. Yes; in the event they rent them out. It places all property ownership on the same level.

Before, during, and after the years before us on this issue, Congress indicated its understanding that legislation is required in order to treat owner-lessees in housing cooperative corporations as owners of the units they have the right to occupy. [11] Each such item of legislation granted such persons the beneficial tax incidents of owners for a limited purpose, *i. e.*, deferral of gain on sale, deduction of taxes, mortgage interest, and depreciation.

We agree with respondent's view that petitioner is a housing cooperative corporation and that its members are equivalent to stockholders for our purposes. See *Rev. Rul.* 55-316, 1955-1 *C. B.* 312. Our examination into the legislative history of the Code provisions specifically dealing with housing cooperative corporations leads us to agree with the following summary by the Commissioner of Internal Revenue, of existing law as it relates to depreciation deductions by cooperative housing corporations on account of dwelling units in those cooperatives: (1962-50 I. R. B. 46 (December 10, 1962))

Prior to this amendment, [section 28 of the Revenue Act of 1962] under section 216, [of the 1954 Code] a tenantstockholder in a cooperative housing corporation was allowed a deduction for his share of the taxes and interest paid by the corporation but was not permitted any deduction for amortization or depreciation where the premises were used in a trade or business or for the production of income. This result was due to the fact that what he owned was merely stock in a corporation; he had no depreciable interest in the real estate and could not amortize his right of tenancy as it is an integral part of the stock for which no separable basis could be ascribed.

Our view of the law and the facts found in this case convince us that we must give effect to the form of ownership adopted by petitioner and its members with regard to the real property and associated equipment, depreciation of which is here at issue. Accordingly, we conclude that petitioner, and not its members, owns this property.

Respondent points to the provision in paragraph TENTH of petitioner's amended charter ([Dec. 24,902] 36 T. C. at 522) providing for conveyance to each member of his dwelling unit upon petitioner's liquidation. Respondent agrues that "Dwelling tenants do not obtain title to their apartments just because their corporate landlord dissolves." Of course, title conveyance on dissolution is predicated here upon membership in petitioner and not merely upon tenancy. [12]

Respondent is mistaken in his reliance upon that part of *Rev. Rul.* 55-316, *supra*, at 314-315, in which it is stated that "Perpetual use of and equity in an apartment or the proprietary lease of an apartment, coupled with membership in the corporation, is the equivalent for practical purposes of ownership of an apartment." This statement is based upon the ruling's understanding that the 1942 Senate report, *supra*, on section 23(z) of the 1939 Code indicated that "The purpose of section 23(z) is to place the cooperative apartment owner in as favorable a position with respect to interest and taxes paid as the owner of a dwelling house." As we have seen, that committee report speaks of "the tenant stockholders of a cooperative apartment" rather than the owner of an apartment. This difference is crucial.

In contradistinction to petitioner's relationship to the PHA on the mortgage, petitioner's holding of legal title vis-a-vis the occupants of the dwelling units, was not occupants of the dwelling units, was not [Dec. 20,238], 21 T. C. 1049 (1954), affd. [56-1 USTC ¶9467], 232 F. 2d 742 (C. A. 9, 1956); *F. and R. Lazarus & Co.* [Dec. 8967], 32 B. T. A. 633, 634 (1935), affd. [39-1 USTC ¶9305], 101 F. 2d 728 (C. A. 6, 1939), affd. [39-2 USTC ¶9763], 308 U. S. 252 (1939)), but was the result of a deliberate choice by its member-tenants to conduct their affairs in the corporate form. *Moline Properties Inc. v. Commissioner* [43-1 USTC ¶9464], 319 U. S. 436 (1943); *National Carbide Corp. v. Commissioner* [49-1 USTC ¶9223], 336 U. S. 422 (1949).

Respondent seeks to draw support for his position from the enactments above referred to, designed to place cooperative tenant-stockholders in the same position as home owners. On the contrary, those provisions, carefully limited as to availability and effect, show rather Congress' understanding that otherwise cooperative tenantstockholders would not be treated as home owners.

Respondent maintains in the alternative that this property was neither used by petitioner in its trade or business (and suggests petitioner had no trade or business) nor held for the production of income.

The income which respondent is seeking to tax in this proceeding was derived largely from petitioner's ownership, management, and rental of its real property. In the language of the statute, this is "property held for the production of income."

Camp Wolters Enterprises, Inc. [Dec. 20,430], 22 T. C. 737 (1954), affd. [56-1 USTC ¶9314], 230 F. 2d 555 (C. A. 5, 1956), cited by respondent, is not relevant, since petitioner here held its realty for rent and not for sale to customers in the ordinary course of its business. *Gladdings Dry Goods Co.* [Dec. 642], 2 B. T. A. 336 (1925), also does

not help respondent since it is petitioner's investment that is here being recovered by petitioner via depreciation.

Under the circumstances it is not necessary to decide whether petitioner was carrying on a trade or business within the meaning of this provision. Compare *Magruder v. Washington, Baltimore and Annapolis Realty Corp.* [42-1 USTC ¶9416], 316 U. S. 69 (1942), with *Stafford Owners v. U. S.* [1930 CCH ¶9264], 69 Ct. Co. 478, 39 F. 2d 743 (1930), both of which relate to "carrying on a trade or business" for purposes of the Federal capital stock excise tax.

"Finally" respondent states on brief, "in addition to the foregoing, and probably most important of all," petitioner should not be allowed to deduct depreciation on the buildings because it may well result in allowing petitioner "to recover its costs more than once", *i. e.*, by depreciation and by exclusion from income of its members' "principal payments." This argument will be discussed in issue (3), *infra,* relating to excludability of "principa payments."

On the basis of our findings of fact ([Dec. 24,902] 36 T. C. at 530-531) and the foregoing discussion, we conclude that this property is depreciable property held by petitioner for the production of income and that petitioner correctly determined the amounts of depreciation for each of the taxable years before us. For treatment of depreciation allowable for petitioner's taxable years 1955 (last nine months) and 1956 see issue (4), *infra.*

On this issue we hold for petitioner.

Issue (3)--Principal Payments

Petitioner excluded from income "principal payments"--the amounts paid by petitioner's members as their pro rata shares of petitioner's mortgage amortization obligations. In all but one of the taxable years before the Court these amounts were less than the amounts the petitioner actually paid that year in amortization of its mortgage. The nature of these principal payments is explained in our findings of fact at [Dec. 24,902] 36 T. C. 524-527.

Respondent avers that if he prevails on the depreciation issue, contending that petitioner's members owned their dwelling units, then petitioner is entitled to exclude from income its mortgage amortization payments, in lieu of the lesser principal payments petitioner sought to exclude. However, if we find for petitioner on the depreciation issue, then respondent's alternate position is that the members must be considered as tenants and the principal payments constitute rental income to petitioner. Respondent argues that petitioner may not claim the benefits of section 118 of the 1954 Code [13] and section 29.22(a)-16, Regs. 111, [14] relating to capital contributions by stockholder, since "If petitioner's members were tenants, then the parallel [with corporate stockholders] could never exist. * * * Tenants pay for the *use* of their landlord's property. They do not *own* it." [Italics in original]

Petitioner maintains that the principal payments were capital contributions and not income to petitioner and relies upon the code and regulations provisions deemed inapplicable by respondent. Petitioner sees no inconsistency between its position on this issue and its position on the depreciation issue. Petitioner declines with thanks respondent's offer to exclude the amount of petitioner's mortgage amortization payments, since "It is not the disbursement of the funds but their receipt as capital contributions which permits their exclusion from income."

We agree with petitioner.

Respondent's contentions, other than the allegation of inconsistency between allowing both depreciation deductions and the principal payment exclusions, were considered and rejected by this tribunal in *Paducah & Illinois Railroad Co.* [Dec. 884], 2 B. T. A. 1001 (1925); *874 Park Avenue Corporation* [Dec. 6986], 23 B. T. A. 400 (1931); and *Cambridge Apartment Building Corporation* [Dec. 11,836], 44 B. T. A. 617 (1941), the latter two cases involving cooperative apartment house corporations. The Commissioner acquiesced in the decisions in all three cases. VII-1 *C. B.* 24; X-2 *C. B.* 21; 1941-2 *C. B.* 2. See *I. T.* 1469, I-2 *C. B.* 191 (1922). We have found that the principal payments were credited to an account entitled "Members Equities" and were so shown on petitioner's financial statements. Petitioner's members were advised of their principal payments and accumulated equities by published schedules and individual members' equity records. These payments were applied each year to amortization of petitioner's mortgage indebtedness to the United States. [Dec. 24,902], 36 T. C. at 525. These facts bring this case squarely within the above-cited decisions. Respondent has suggested no contrary authority and we have found none.

Respondent replies, "It is irrational to believe that the two taxpayers, [in *Park Avenue* and *Cambridge Apartment*] while excluding mortgage payments from income. were at the same time being permitted to depreciate assets purchased with mortgage money." The short answer to this argument is that depreciation depends upon basis (section 167(q) of the 1954 Code; section 23(n) of the 1939 Code), which in turn depends primarily upon cost (sections 1011, 1012 of the 1954 Code; sections 113(a, b), 114 of the 1939 Code), which does not normally and does not here depend upon whether the funds out of which the cost is paid constituted taxable income to the taxpayer. [15]

It seems clear that if petitioner's members had contributed the entire purchase price at the time petitioner bought the property from the United States Government, then petitioner could both exclude the contributions from income and deduct depreciation on the depreciable property purchased with such contributions. We fail to see a significant difference where petitioner's members make their capital contributions in installments instead of all at once.

We do not interpret any of the recentlydecided cases dealing with whether certain payments by stockholders were contributions to capital or payments for services rendered or to be rendered, to require a different decision in this case. See *Federal Employees'*

Distributing Co. v. United States [62-2 USTC ¶9591], 206 F. Supp. 330 (S. D. Cal., 1962), on appeal C. A. 9. *Cf. James Hotel Company* [Dec. 25,709], 39 T. C. 135 on appeal (C. A. 10, January 17, 1963); *United Grocers, Ltd. v. United States* [62-2 USTC ¶9763], 308 F. 2d 634 (C. A. 9, 1962); *Affiliated Government Employees' Distributing Co* [Dec. 25,351], 37 T. C. 909 (1962).

Respondent's arguments regarding contingent reserve accounts and the repealed section 462 of the 1954 Code, prepaid or unearned income, the difference between prepaid rental and security deposits, and prohibition of methods of accounting which do not clearly reflect income are only vaguely relevant and are rendered immaterial by the statutory and case law hereinabove described as controlling in this area.

On this issue we hold for petitioner.

Issue (4)--Book Credits

Under petitioner's amended charter and bylaws, after October 1, 1954, petitioner "treated as loans from members, for which they would be given credit on the books at the end of the corporation's fiscal year" ([Dec. 24,902] 36 T. C. at 528) each year's operating surplus and the annual additions to petitioner's reserve for repairs, replacements, and maintenance and petitioner's reserve for vacancies and collection losses. Petitioner included these "book credits" as expenses and deducted them from income. [Dec. 24,902] 36 T. C. at 529.

Petitioner maintains that these amounts are patronage refunds, properly excludable from income. Respondent's view is that a housing cooperative may exclude a patronage refund only if the refund is made in the same taxable year of the cooperative in which the transactions occurred giving rise to the (*Rev. Rul.* 56-225, 1956-1 *C. B.* 58); "that none of them [the book credits] may actually be paid in cash to petitioner's members until petitioner has succeeded in extinguishing its complete mortgage indebtedness"; and that reserves for future, contingent expenses are not currently deductible. *Cf.* section 462 of the 1954 Code, repealed retroactively. Act of June 15, 1955, ch. 143, section 1(b), 69 Stat. 134.

We agree with petitioner.

Although section 522(b)(2) of the 1954 Code [16] requires that patronage refunds of cooperatives exempt under section 521 of the 1954 Code (dealing with certain farmers' cooperatives) be treated in the same manner as refunds by cooperatives not so exempt, the Code does not specifically authorize any deduction or exclusion on this account for nonexempt cooperatives. [17] However, the courts have approved and made a part of the law respondent's reasonably consistent practice of treating "true patronage dividends as *corrective and deferred price adjustments*, which serve to reduce the amount of the cooperative's gross profit from sales, and which actually never become part of its gross income." [Italics in original] *Pomeroy Cooperative Grain Co.* [Dec. 23,302], 31 T. C. 674, 686 (1958), affd. on this point [61-1 USTC ¶9316], 288 F. 2d 326 (C. A. 8, 1961).

In *Pomeroy,* we set forth three tests which must be met in order for an allocation to be a true patronage dividend: The allocation must have been made (1) pursuant to a pre-existing legal obligation, (2) out of profits realized from transactions with the particular patron for whose benefit the allocation was made, and (3) ratably among the patrons according to the particular types of transactions that gave rise to the profits. We do not understand respondent to maintain that these criteria have not been met.

Respondent's above-noted arguments do not destroy petitioner's exclusion from income under the *Pomeroy* tests. It is not relevant that the book credits may not be paid in cash until petitioner has extinguished its mortgage indebtedness. *Farmers Cooperative Company v. Commissioner* [61-1 USTC ¶9282], 288 F. 2d 315, 318-324 (C. A. 8, 1961), reversing on another point [Dec. 23,842], 33 T. C. 266 (1959). The Court of Appeals there notes ([61-1 USTC ¶9282], 288 F. 2d at 320) that although it agrees with the reasonableness of the Commissioner's contention that a cooperative's exclusion of patronage refunds from income should be geared to includibility in the income of the patron (with exceptions not here relevant), nevertheless, that is not how the law developed. [18] *Long Poultry Farms v. Commissioner* [57-2 USTC ¶10,048], 249 F. 2d 726, 731 [19] (C. A. 4, 1957); *B. A. Carpenter* [Dec. 19,739], 20 T. C. 603, 607 (1953), affd. [55-1 USTC ¶9259], 219 F. 2d 635 (C. A. 5, 1955); *Caswell's Estate v. Commissioner* [54-1 USTC ¶9330], 211 F. 2d 693 (C. A. 9, 1954); section 1.61-5(b)(iii), Income Tax Regs., amended by *T. D.* 6428, 1959-2 *C. B.* 26 to conform to the *Long Poultry* and *Carpenter* decisions. See *United Control Corporation* [Dec. 25,678], 38 T. C. 957, where we held that credit contract restrictions on payment by the taxpayer of officers' salaries did not prevent current deduction of liabilities for salaries. There it was likely that cash payments would eventually be made. *Farmers Cooperative* and the matters there cited make it clear that the likelihood of eventual cash payment is not a requisite for exclusion from income of cooperative patronage refunds.

Respondent's argument that no deductions may be taken because of additions to reserves for estimated expenses (except, presumably, in the case of bad debts (section 166(c) of the 1954 Code)) is also not material, since petitioner here seeks exclusions from income, not on account of its additions to the reserves but rather on account of its allocations of the added amounts to its members. The tests we laid down in *Pomeroy* do not differentiate between operating surpluses and reserves for particular purposes. Also, Congress in 1951 seems clearly to have understood it to be law that allocations of such items might be the subject of patronage refunds. S. Rept. 781, 82d Cong., 1st Sess., September 18, 1951, p. 21. [20] The 1954 Code made no change in the patronage refund provisions. See footnote 16, *supra.* We gather from this that, during the years before us on this issue, there was no difference between the tax treatment of patronage refund allocations out of operating surplus and similar allocations out of reserves for future contingencies.

We are left with respondent's contention that his view is expressed in *Rev. Rul.* 56-225, *supra,* which reads as follows:

> Where, in the case of a cooperative housing corporation, as defined in section 216(b)(1) of the Internal Revenue Code of 1954, predetermined carrying charges are collected from the tenant-stockholders in excess of the actual carrying charges paid or incurred by the corporation, any refund of such charges occurring in the same year merely results in a contra-adjustment and only the net amount of the carrying charges would be taken into the accounts of the corporation for Federal income tax purposes. However, where the excess of predetermined charges at the end of any year is not used to reduce carrying charges until a subsequent year or years, such excess constitutes income to the corporation subject to Federal income taxes in the year in which received.

In *Farmers Cooperative Co.* [Dec. 23,842], 33 T. C. 266 (1959), we agreed with respondent that one necessary element of allocation of patronage refunds is disclosure to the patron of the dollar amount apportioned to him and that an exempt cooperative taxable under section 101(12)(B) of the 1939 Code may exclude only those patronage dividends it has allocated by the due date of its return--81/2 months following the close of its taxable year. We determined that Congress did not intend to allow to nonexempt cooperatives a privilege clearly denied to exempt cooperatives. We then concluded that since the taxpayer there (a nonexempt cooperative) had not disclosed to its patrons the dollar amount of their patronage refunds until more than 15 months after the close of one taxable year and more than 21 months after the close of the next taxable year, it could not exclude those patronage refunds from income for the taxable years then before the Court. We reasoned that exclusion from income by the cooperative depended upon prompt notification to its patrons because "the pattern of taxation adopted by Congress in section 101(12)(B) of the 1939 Code and section 522(b)(2) of the 1954 Code, with respect to the taxation of the refundable earnings of exempt cooperative associations indicates a congressional intent to tax to the individual patron his share of a patronage refund deducted by the cooperative." [Dec. 23,842], 33 T. C. at 270. In this we were supported by the 1951 Revenue Act Finance Committee Report, *supra,* which stated, at p. 21, "As a result of this action, [the amendment adopted by the 1951 Revenue Act] all earnings or net margins of cooperatives will be taxable either to the cooperative, its patrons or its stockholders * * *" (with exceptions not here material).

As indicated above, three circuits had already taken an apparently contrary view in suits by patrons. The Courts of Appeals concluded that Congress had not legislated in accordance with our understanding of the committee report. On December 3, 1959, 16 days after this Court's decision in *Farmers Cooperative,* the Commissioner caused to be published in the Federal Register the above-noted amendment to conform his regulations to the Court of Appeals' decisions.

On February 1, 1960, the Treasury Department's representative testified at the Ways and Means Committee hearings on taxation of cooperatives that:

> Corrective legislation is clearly needed because under existing law it is possible for a cooperative to exclude from its taxable income certain noncash patronage dividends paid to its members which, at the same time, are not taxable to the

members who receive them. [Hearings on Tax Treatment of Cooperatives. H. Rept. Ways and Means Committee. 86th Cong., 2nd Sess., February 1-5, 1960, p. 5.]

The following year, our decision in *Farmers Cooperative* was reversed. [61-1 USTC ¶9282], 288 F. 2d 315, 325-326 (C. A. 8, 1961).

The Court of Appeals noted that although Congress placed specific restrictions upon exempt cooperatives with regard to when the patronage refund must have been allocated, "No like provision is made for nonexempt corporations." No cases were found imposing such requirements upon nonexempt cooperatives and the Commissioner had issued no regulations or rulings in effect during those years (1953 and 1954) imposing such requirements. The Court of Appeals concluded that "The taxpayer here has apparently met the traditional standards applied to this situation" (288 F. 2d at 326) and held the patronage refunds excludible from the taxpayer's income.

The position the Commissioner took in *Rev. Rul.* 56-225 and which he takes in this proceeding is different from that which he took in *Farmers Cooperative* on this point. It also differs from *Rev. Rul.* 59-322, 1959-2 *C. B.* 154, which asserts that the allocation must be made by the due date of the return (21/2 months after the end of the taxable year). The latter revenue ruling then notes the confusion engendered by the Code provisions regarding exempt farmers' cooperatives and states that, as to taxable years ending prior to January 1, 1960, any allocation made within 81/2 months after the end of the taxable year to which it related would be treated as having been made during the taxable year to which it related.

Petitioner notified its members of their allocations for petitioner's 1956 taxable year within five months after the end of that year. This allocation meets the test which respondent indicated in *Rev. Rul.* 59-322 would be applicable to that year. The allocation for petitioner's 1955 taxable year was made within 12 months after the end of that year.

Respondent makes no effort to explain the reason for his position in *Rev. Rul.* 56-225, [21] nor the apparent inconsistency between that position and the one he takes in *Rev. Rul.* 59-322. [22] Respondent does not appear to have issued any further rulings or any regulations on this point since the period described in *Farmers Cooperative,* which overlaps to some extent the period before us on this issue. Respondent does not rely upon or even cite our decision in *Farmers Cooperative,* which was promulgated almost nine months before respondent's reply brief herein was filed.

Respondent has recognized that "patronage * * * refunds due patrons of a cooperative organization are not profits of the cooperative organization notwithstanding the amount due such patrons cannot be determined until after the closing of the books of the cooperative organization for a particular taxable period." *G. C. M.* 17895, 1937-1 *C. B.* 56. In *I. T.* 1566, II-1 *C. B.* 85 (1923) a deduction was allowed for year one for rebates paid in year two on account of purchased made in year one. "Taxable years" are referred to. There is no suggestion that the rebate must be made by the due date of the return.

Under these circumstances we are persuaded that the allocations herein, each made within the taxable year immediately following the one to which it related, were timely for the years before us. [23] We do not find it necessary, on the state of this record, to determine whether we will follow the Court of Appeals' decision in *Farmers Cooperative* that allocations made more than one full year after the taxable years to which they relate may nevertheless be deducted in the taxable years to which they relate.

On its returns for its taxable years 1955 (nine months after October 1, 1954) and 1956, petitioner included depreciation in its schedules of "Operating and Other Expenses" and then reduced its deductions by equal amounts on its "Statement of Earnings" with notations to the effect that such depreciation was not used in calculating members' book credits, *i.e.*, did not reduce the amount available for patronage refunds of operating surplus. The effect of these computations was to avoid a double reduction of taxable income on account of a single amount. Since excludable patronage refunds in the case of a purchasing cooperative [24] are properly a return of collections which exceeded expenses, a book credit return of an item which also was properly treated as an expense would not be a true patronage refund. This consideration will be taken into account in a Rule 50 computation. See issue (2), *supra*.

In each of the two years involved in this issue, there was a difference between the book credits allocated to members on account of excess revenues and additions to funded reserves on the one hand and the corresponding patronage refunds deducted on the returns on the other hand. The returns indicate that the excess revenue book credits deducted on the returns were derived by adding back to the actual excess revenues, the amounts of Federal and state income taxes and a "charge off of refrigerators and ranges sold or discarded," and then reducing such sums by the amounts of nonmember income for the years involved. The returns do not explain the differences in the reserve accounts book credits. The amounts excludable as patronage refunds in the Rule 50 computation will not exceed the amounts actually allocated to petitioner's members nor will the excess revenue book credits include amounts in addition to net after-tax revenue from members.

The book credits forfeited by a member who leaves before the end of petitioner's fiscal year and sells his membership to petitioner are allocated to the remaining members. These amounts have not arisen from the patronage of those to whose accounts they have been credited. Under the *Pomeroy* tests, *supra*, these reallocated amounts are not excludable from petitioner's income.

With the modifications indicated herein, on this issue we hold for petitioner.

Issue (5)--North Carolina Income Taxes

Petitioner states that if we determine deficiencies for any of the years before us, petitioner will be required to pay additional North Carolina income taxes, plus interest thereon, for those years. Petitioner urges that, as an accrual basis taxpayer, it should be permitted to accrue and deduct such tax and interest items in the years to which they relate.

This contention was made and rejected in *Globe Tool & Die Manufacturing Co.* [Dec. 23,732], 32 T. C. 1139 (1959). We have not found and petitioner has not suggested any reason for re-examining the issue or for deeming *Globe Tool* inapplicable here.

On this issue we hold for respondent.

Issue (6)--Net Operating Loss 1947-1948

Petitioner maintains that it sustained a net operating loss for the period April 1, 1947--March 31, 1948, [25] that its status regarding Federal income tax exemption was the same during that period as it was thereafter. If petitioner was not exempt thereafter, petitioner argues it could not have been exempt during the period and it was entitled to carry forward this loss under the provisions of sections 23(s) and 122 of the 1939 Code. Petitioner's view is that during the period April 1, 1947--March 31, 1948, it was a vendee in possession, operating the housing project for its own profit.

Respondent contends that petitioner was not a taxable entity during the period relevant to this issue because it was then an agency of the United States Government.

We agree with petitioner.

The purchase and sales contract entered into between petitioner and PHA provided for disposition of any excess of project revenue over PHA-approved expenditures: (1) to be kept by PHA as rental if the contract terminated prior to delivery by PHA of conveyance documents to petitioner and (2) otherwise to be applied to payment of petitioner's interest and purchase price obligations under the contract. We find no provision for the possibility that petitioner might spend more than it received from operation of the project.

From this we gather the intention of the parties to that contract to have been that profits and losses would inure to and be borne by petitioner, at least if petitioner survived this testing period. In this regard, petitioner acted for its own and its members' profit to the same relevant extent before as well as after the property was deeded to it. Even if petitioner's role in the housing programs of the United States Government might cause petitioner to be deemed a Government agency for other purposes, [26] it does not appear that at any time during the period before us the role was such as to make it exempt from Federal income taxation on this ground. In this understanding we are reinforced by the Court of Appeals' analysis of the effect of PHA regulation of petitioner upon petitioner's arguments for tax exemption as a social welfare organization. [62-2 USTC ¶9602], 305 F. 2d at 819.

We conclude, on the basis of the law applicable to this case, that petitioner was not exempt from taxation during the period April 1, 1947--March 31, 1948.

Since we have found that petitioner did sustain a net operating loss during that period as claimed, we hold for petitioner on this issue.

Decisions will be entered under Rule 50.

[1] Application of the statute of limitations to petitioner's taxable year 1951 was raised by the pleadings, but was withdrawn by petitioner's counsel at trial.

[2] SEC 275. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

Except as provided in section 276--

(a) General Rule.--The amount of income taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

[3] SEC. 302. EXEMPTION OF CERTAIN ORGANIZATIONS FOR PAST YEARS.

* * *

(b) Period of Limitations.--In the case of an organization which would otherwise be exempt under section 101 of the Internal Revenue Code were it not carrying on a trade or business for profit, the filing of the information return required by section 54(f) of the Internal Revenue Code (relating to returns by tax-exempt organizations) for any taxable year beginning prior to January 1, 1951, shall be deemed to be the filing of a return for the purposes of section 275 of the Internal Revenue Code (relating to period of limitation upon assessment and collection). * * *

[4] SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

* * *

(g) Certain Income tax Returns of Corporations.--

* * *

(2) Exempt organizations.--If a taxpayer determines in good faith that it is an exempt organization and files a returns as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

Section 6501(g)(2) I. R. C. 1954 does not apply to years prior to 1954 (section 7851(a)(6) I. R. C. 1954) and there was no comparable provision in the 1939 Code. S. Rept. 1622, 83d Cong., 2d Sess. June 18, 1954, pp. 144, 145, 585.

[5] See *John Danz* [Dec. 19,013], 18 T. C. 454, 465 (1952), affd. [55-2 USTC ¶9723], 231 F. 2d 673 (C. A. 9, 1955); *F. E. McGillick Co.* [Dec. 23,144], 30 T. C. 1130, 1150 (1958), affd. on this point [60-2 USTC ¶9481], 278 F. 2d 643 (C. A. 3, 1960).

[6] E.g. section 302(b), Revenue Act of 1950; section 6501(g)(2) I. R. C. 1954.

[7] * * * Lake Forest, Inc. is not a movement of the citizenry or of the community. Rather, at most it is a venture--unquestionably praiseworthy--for securing its members living quarters.

* * * II. Nor is "social welfare" the beneficence sponsored by Lake Forest, Inc. * * *

* * * It does not propose to offer a service or program for the direct betterment or improvement of the community as a whole. * * * Lake Forest does, of course, furnish housing to a certain group of citizens but it does not do so on a community basis. It is a public-spirited but privately-devoted endeavor. Its work in part incidentally redounds to society but this is not the "social welfare" of the tax statute.

[8] SEC. 23. [I. R. C. 1939] DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * *

(1) Depreciation.--A reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)--

(1) of property used in the trade or business, or

(2) of property held for the production of income.

This provision was re-enacted as section 167 (a), I. R. C. 1954.

[9] Respondent cites Maryland, District of Columbia, and New York cases to that effect. Compare I *American Law of Property,* (1952) sec. 3.10, pp. 200-202, and cases there cited.

[10] Explained in *Borland v. Commissioner* [41-2 USTC ¶9723], 123 F. 2d 358, 362 (C. A. 7, 1941), reversing [Dec. 11,622], 43 B. T. A. 332 (1941), as follows:

There was involved a *co-operative apartment* venture, in *corporate* form. The court held that the apartment owner could not deduct the tax imposed on his interest in the property. This conclusion was necessitated by reason of the fact that the corporation was listed on the assessment books as the owner, and the corporation paid the tax, and *deducted* it in making its corporate income tax return. The court pointed out those facts

stating that the taxes were paid by the corporation and not by the "complainants," and that the corporation had already received the benefit of the deductions for the taxes paid.

[11] While we recognize the limited usefulness of congressional actions as aids to interpretation of earlier-enacted statutes (see *Estate of John G. Stoll* [Dec. 25,493], 38 T. C. 223, 246-247 (1962), on appeal, C. A. 6, December 21, 1962, and cases there cited), we nevertheless will give weight to those later actions which evidence a consistent continuing view of the earlier law.

[12] *Cf.* reference to condominiums in Senate discussion of section 28 of the 1962 Revenue Act, *supra.*

[13] SEC. 118. CONTRIBUTIONS TO THE CAPITAL OF A CORPORATION.

(a) General Rule.--In the case of a corporation, gross income does not include any contribution to the capital of the taxpayer.

(b) Cross Reference.--For basis of property acquired by a corporation through a contribution to its capital, see section 362.

[14] Sec. 29.22(a)-16. Contributions to Corporation by Shareholders.--If a corporation requires additional funds for conducting its business and obtains such needed money through voluntary pro rata payments by its shareholders, the amounts so received being credited to its surplus account or to a special capital account, such amounts will not be considered income, although there is no increase in the outstanding shares of stock of the corporation. The payments under such circumstances are in the nature of voluntary assessments upon, and represent an additional price paid for, the shares of stock held by the individual shareholders, and will be treated as an addition to and as a part of the operating capital of the company. (See sections 29.22(a)-13 and 29.24-2.)

[15] See sections 362(a)(2) I. R. C. 1954 and 113(a)(8)(B) I. R. C. 1939, which provide that property contributed to capital takes the same basis in the hands of the donee corporation as it had in the hands of the donor, adjusted to the extent of the donor's gain or loss. *Cf.* section 362(c)(2) I. R. C. 1954 dealing with money contributions to capital after January 22, 1954, by nonstockholders. Here the contributions were by members, treated for our purposes as stockholders, acting as such.

[16] SEC. 522. TAX ON FARMERS' COOPERATIVES.

* * *

(b) Computation of Taxable Income.--

* * *

(2) Patronage dividends, etc.--Patronage dividends, refunds, and rebates to patrons with respect to their patronage in the same or preceding years (whether paid in cash, merchandise, capital stock, revolving fund certificates, retain certificate, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the dollar amount of such dividend, refund, or rebate) shall be taken into account in computing taxable income in the same manner as in the case of a cooperative organization not exempt under section 521. Such dividends, refunds, and rebates made after the close of the taxable year and on or before the 15th day of the 9th month following the close of such year shall be considered as made on the last day of such taxable year to the extent the dividends, refunds, or rebates, are attributable to patronage occurring before the close of such year.

This provision re-enacts, without substantive change, part of section 101(12)(B) I. R. C. 1939, added by section 314(a) of the Revenue Act of 1951. H. Rept. I. R. C. 1954, *supra,* p. A172; S. Rept. I. R. C. 1954, *supra,* p. 314.

[17] *Cf.* section 17(a) of the Revenue Act of 1962.

[18] This is changed by sections 1382(b) and 1385(a) I. R. C. 1954, added by section 17(a) of the Revenue Act of 1962. Section 17(c)(3) of that Act makes its provisions inapplicable to the years before us.

[19] The Commissioner places great weight on the argument that by 26 U. S. C. §101(12)(B) an exempt cooperative is permitted to deduct from gross income patronage dividends such as are here involved and that there was testimony before committees of Congress to the effect that these would be returned for taxation by the recipients. The answer is that Congress while granting the right to the deduction by the cooperative left the matter of taxing the dividends to the recipients to be dealt with by existing law, making no change whatever with regard thereto, with the result that cash basis taxpayers will report as income patronage dividends such as are here involved in the year when payment thereof is received and accrual basis taxpayers will report them as income for the year in which the right to receive payment becomes reasonably definite and certain.

[20] Section 314 of your committee's bill continues the exemption provided by section 101 (12) of the code but removes from its application earnings which are placed in reserves or surplus and not allocated or credited to the accounts of patrons. In addition to being taxfree with respect to patronage dividends paid or allocated to patrons, as is generally also true in the case of other cooperatives, the cooperatives coming under section 101(12) are also to remain exempt with respect to amounts paid as dividends on capital stock, and with respect to amounts allocated to patrons where the income involved was not derived from patronage, as for example in the case of interest or rental income, and income derived from business done with the Federal Government. *Moreover, they will not be taxed in any way with respect to reserves set aside for any necessary purpose, or reserves required by State law, if such reserves are allocated to patrons.* [Italics supplied.]

[21] Petitioner suggests that the result in that ruling is explainable by the absence of any reference therein to a pre-existing obligation to make patronage refunds--such obligation being one of the prerequisites to exclusion under *Pomeroy*.

[22] *Rev. Rul.* 59-322 is based on *T. I. R.* 175, September 16, 1959, issued before the trial in this case and almost a year before respondent's reply brief herein was filed.

[23] The comments in H. Rept. 1447, 87th Cong., 2d Sess., March 16, 1962, p. 80, and S. Rept. 1843, 87th Cong., 2d Sess., August 16, 1962, p. 113, that under present law allocations must be made by the due date of the return are not nor do they purport to be based on lines of case law or consistent administrative action by the Commissioner. We do not consider these statements as to prior law to be of significant value in reaching our decision here. *Cf.* footnote 11, *supra*.

[24] A housing cooperative more closely resembles a cooperative purchasing of facilities and services than a cooperative selling of products or services generated by its members.

[25] Although this period is prior to the start of the earliest taxable year before us, we may nevertheless consider such facts with relation to petitioner's taxable status and income for this period as may be necessary correctly to determine petitioner's taxes for the taxable years before us. Sections 272(g) of the 1939 Code and 6214(b) of the 1954 Code.

[26] *Cf. Dorsey v. Stuyvesant Town Corp.*, 299 N. Y. 512, 87 N. E. 2d 541 (1949); *Johnson v. Levitt & Sons*, 131 F. Supp. 114 (E. D. Pa., 1955); *Ming v. Horgan*, 3 Race Rel. L. Rep. 693, 1958). These cases are discussed in 28 Geo. Washington L. R. 758, 764-767 (1960).