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SECTION 149(1)(k)

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

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

**PRINCIPAL ISSUES: Is the communal corporation a benevolent or fraternal benefit society under paragraph 149(1)(k) of the Act?**

**POSITION: No.**

**REASONS: The corporation is not the type of organization contemplated in paragraph 149(1)(k). The members have not banded together for their mutual aid and benefit and the corporation is not providing benefits for its members.**

October 17, 2012

Specialty Audit Section	Headquarters
Compliance Programs Branch	Income Tax Rulings
	Directorate
	P. Burnley
Attention: Rubin Dressler	(613) 957-2100

2011-042798

XXXXXXXXXXXX (the "Corporation")

We are writing in response to your request for our views as to whether the Corporation qualified for an exemption from tax pursuant to paragraph 149(1)(k) of the Income Tax Act (the “Act”). This provision exempts the taxable income of a person if that person was “a labour organization or society or a benevolent or fraternal benefit society or order.” We have previously given our views as to whether the Corporation qualified for an exemption from tax under paragraph 149(1)(l) of the Act and whether section 143 of the Act (communal organizations) may have been applicable (see our document E2011-041085).

The facts as we understand them are provided in our previous document, and are only briefly repeated here. The Corporation’s members live together in a building owned by a charity, contribute all of their income to the Corporation, and gave up their major assets to join the group. There are no annual membership fees or minimum yearly contribution requirements. The Corporation pays rent, members’ personal and living expenses, including income taxes, and invests income not currently needed in term deposits. The Corporation intends to use the term deposits and the interest earned on these investments to pay for members’ future care and needs.

The term “benevolent or fraternal benefit society or order” is not defined in the Act; therefore, we must consider the common, ordinary meaning. Black’s Law Dictionary defines a “fraternal benefit society” as

“A voluntary organization or society created for its members’ mutual aid and benefit rather than for profit, and whose members have a common and worthy cause, objective, or interest. These associations usually have a lodge system, a governing body, rituals, and a benefits system for their members.”

In our opinion, the corporation does not meet this description. The Corporation appears to be organized and operated to group together its members to live, and to pay for all of the members’ living expenses. In our view, the members have not banded together based on a common cause for their mutual aid and benefit, nor is the Corporation providing a benefits system for the members. Because the members give up all of their major assets to join the group and contribute all of their annual income to the Corporation, the provision of accommodation and payment of the members’ living expenses by the Corporation is a necessity rather than a benefit. Additionally, as mentioned in our previous document, E2011-041085, the Corporation appears to have profit as one of its purposes (with respect to its objective to accumulate funds to invest on a tax-exempt basis).

In our view, the Corporation likely did not qualify for an exemption from tax pursuant to paragraph 149(1)(k) of the Act for the taxation years under review.

Please contact us, if we may be of any further assistance.

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Yours truly,

R. Albert, CA  
Manager  
Non-Profit Organizations and Aboriginal Issues  
Business and Employment Division  
Income Tax Rulings Directorate  
Legislative Policy and Regulatory Affairs Branch