

On Top of the World Condominium Association, Inc.  
8445 SW 80<sup>th</sup> Street  
Ocala, FL 34481

Dear Board:

Thank you for submitting your questions regarding the On Top of the World Condominium Association, Inc. (the "Association"). Below you will find my responses to each of your questions, which I hope will clarify any uncertainties related to the tax treatment of condominium associations.

**Is the Association a not-for-profit entity which files a Form 990?**

No. The Association is a Florida not for profit corporation. Condominium associations fall under Section 528 of the internal Revenue Code, *Certain homeowners associations*. The Association may elect to be treated as a federal tax-exempt organization under Internal Revenue Code (IRC) Section 528 by filing Form 1120-H, US Income Tax Return for Homeowners Associations and checking the box noting it is a condominium management association. This election may be made annually and is binding only for the year made. However, if the Association chooses not to make the election to be treated as a tax-exempt organization for any given year it would file Form 1120, US Corporation Income Tax Return. In contrast, a Form 990 is filed by organizations which are exempt from tax under IRC Section 501(a). As noted above, the Association does not fall under IRC Section 501(a), but rather Section 528.

**Is a tax-exempt association subject to tax on any income?**

Yes. An association electing to be treated as a tax-exempt association must pay taxes at a rate of 30% on all net non-exempt income. This rate applies to both ordinary and capital gains. Exempt function income as defined by IRC 528(d)(3) means any amount received as membership dues, fees, or assessments from owners of condominium housing units in the case of a condominium association. Any income coming from an individual or entity who is not a member is considered taxable. Any income coming from an owner in their capacity as a customer rather than an owner is also taxable. The election to be treated as a tax-exempt organization only applies to exempt function income. Non-exempt function income is still taxable.

**What are some examples of taxable income for a tax-exempt association?**

Dividends, taxable interest, rental income, royalties, capital gains and other income not meeting the definition of exempt function income.

**Why would an association choose not to elect tax treatment as a federal tax-exempt organization for a tax year?**

Because the election is an annual election only, an association should consider whether a 30% tax rate on non-exempt income exceeds the taxes on total net income if it were to file Form 1120 instead. The current tax rate on Form 1120 is 21%. There may be instances where tax is eliminated by filing Form 1120 vs 1120H if the association has non-exempt income. This is a determination which should be made based on all facts and circumstances each year before filing the return.

**If the Association collects door fee income from Summit would this be considered taxable income?**

Yes. If the Association files Form 1120H to elect treatment as a tax exempt-organization under IRC Section 528, because the payment is not received from owners of condominium housing units the income would not be considered exempt function income and would therefore be included in the calculation of net non-exempt function income taxable at 30%. If the Association files Form 1120, the payment would be included as gross income in the calculation of net taxable income subject to tax at a 21% rate.

I hope the above has answered your questions and provided the clarity you were looking for related to the tax treatment of condominium associations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Susan Thompson", with a long horizontal flourish extending to the right.

Susan Thompson, CPA  
Principal  
Christopher, Smith, Leonard & Stanell, PA