

Internal Revenue Service

Department of the Treasury

District
Director

1100 Commerce St., Dallas, Texas 75242

Date: FEB 09 1995

Person to Contact:

Telephone Number:

Refer to:

> [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from federal income tax under section 501(a) as an organization described in section 501(c)(4) of the Internal Revenue Code.

The information submitted with your application indicates you were incorporated [REDACTED]. According to your Articles of Incorporation, the purposes for which you were created are:

1. To provide for the maintenance and preservation of all of the properties within [REDACTED].
2. To promote the health, safety and welfare of the tract owners within [REDACTED].

In your application, you state that you maintain and landscape esplanades, entrances and open areas for the benefit of the property owners and all visitors. You also perform lake maintenance, provide water and electricity for the common areas, and contract with a management company to monitor and enforce deed restrictions. You anticipate that your future activities will be the same as present.

You state that [REDACTED] is a mixed-use development located in [REDACTED], consisting of approximate [REDACTED] acres. There are [REDACTED] retail businesses established within the boundaries of [REDACTED].

In your Bylaws, you state that the terms "Property or Properties" shall mean and refer to land within [REDACTED]; "Tract" shall mean and refer to each parcel of land within the Properties described in a deed; "Owner or Tract Owner" shall mean and refer to any person, firm, corporation, or other entity or any combination thereof that is the record owner of fee simple title to a Tract; and "Common Area" shall mean all real and personal property now or hereafter utilized by the [REDACTED] for the common use or enjoyment of the Owners, including, by way of example and not limitation, esplanades, medians, green belt areas, landscape easements or reserves, parkways, private streets, or similar areas for the common benefit, use or enjoyment of the Owners."

You have entered into a management agreement with [REDACTED], an unrelated management company, to monitor deed restrictions and perform administrative, financial and property management services for your organization.

[REDACTED]
[REDACTED]

Your sources of support are annual assessments charged to property owners and interest earned from investment accounts. As indicated in your application, close to [REDACTED] of your support is derived from annual assessments.

Your operating expenses include maintenance, repairs, utilities, management, administrative and franchise tax. From [REDACTED] through [REDACTED], the amounts incurred for grounds maintenance constitute [REDACTED] % of your total expenses.

As of [REDACTED], you had reserved \$[REDACTED] for use as a replacement fund which will be used for landscaping, monument replacement and an irrigation system.

In your letter, dated [REDACTED], you state that the buildings located within the boundaries of [REDACTED] are utilized by individuals and companies in the conduct of their businesses.

In a letter dated [REDACTED], the [REDACTED] states that you maintain rights-of-way in certain areas. Your map shows that those areas are medians and esplanades encompassed along the boundaries of the [REDACTED].

In your letter, dated [REDACTED], you state that you own the lake, greenbelts and other common areas within the boundaries of [REDACTED]. You further state that you maintain and landscape only the entrances to, and the roadsides encompassed along the boundaries of, the [REDACTED]. You also provide common area lighting for everyone.

In the same letter, you indicate the [REDACTED] has an estimated population of [REDACTED] and there are no residents in [REDACTED]. You state that the primary reason for obtaining tax exempt status is that it provides exemption from state sales taxes which are significant to your organization.

You cite Revenue Ruling 80-63 that if an association's activities benefit a community, it may qualify for exemption. You further state that you maintain the rights-of-way and esplanades on city property in identical fashion to the organization as described in Revenue Ruling 75-286.

Section 501(c)(4) of the Internal Revenue 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, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations provides that a civic league or organization may be exempt as an organization described in section 501(c)(4) if it is not organized for profit; and it is operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2) of the 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 about civic betterment and social improvement.

[REDACTED]
[REDACTED]

In Revenue Ruling 74-17, a nonprofit organization formed to provide for the management, maintenance, and care of the common areas of a housing project does not qualify for exemption under section 501(c)(4) of the Code. The ruling holds that the maintenance and care of the common areas of the project constitutes the provision of private benefits for the unit owners.

Revenue Ruling 74-99 provides that the term "community" as used in section 501(c)(4) has traditionally been construed as having reference to a geographical unit bearing a reasonable recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district.

In Revenue Ruling 75-286, an organization formed by the residents of a city block to preserve and beautify the public areas in that block qualifies for exemption under section 501(c)(4). Its activities consist of paying the city government to plant trees on public property, organizing residents to pick up litter and refuse in the public streets, and encouraging residents to take an active part in beautifying the block by placing shrubbery in public areas within the block. The ruling holds that the organization's activities promote social welfare because they beautify and preserve public property in cooperation with the local government thereby benefiting the community as a whole.

Revenue Ruling 80-63 provides answers to specific questions as to whether the conduct of certain activities will affect the exempt status under section 501(c)(4) of qualifying homeowners' associations.

You can be distinguished from those of a homeowners' association because you are not a membership organization formed and controlled by member-homeowners. Your initial trustees are appointed by the [REDACTED] and are not the tract or unit owners of the [REDACTED]. There are no residents in [REDACTED]. The buildings located within the boundaries of the [REDACTED] are utilized by individuals and companies in the conduct of their businesses. Therefore, you are not a homeowners' association and the provisions of Revenue Ruling 80-63, supra, are not applicable to your organization.

You can also be distinguished from the organization described in Revenue Ruling 75-286, supra. That organization was formed by a group of private residents to beautify and preserve public areas within a block. They picked up litter and refuse in the public streets and paid city government to plant trees on public property. In your case, you have contracted with a property management company to maintain and landscape the common areas of a business park which consists of [REDACTED] business units. Those maintenance and landscaping services are provided by a commercial entity through a contract with the property management company. You are not a membership organization composed of private residents. You do not pay city government to plant trees on public property. Nor do you organize the businesses located within the boundaries of the [REDACTED] to pick up litter and refuse in the public streets.

You are organized primarily to maintain and landscape the common areas of the [REDACTED]. A business park cannot be considered as a community since it is not a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision, district or unit. In fact, [REDACTED] is a commercial development which provides a place for

████████████████████
████████████████████
individuals and companies to conduct business.

You do not restrict the general public access to the common areas of the ██████████ because the property owners use the buildings located within the boundaries of the Park in the conduct of business with the general public. You provide common area lighting for the use and convenience of the property owners and their customers.

In order for the businesses located in ██████████ to attract and serve more customers, it is necessary for them to pay assessments to your organization for maintaining and landscaping the common areas, rights-of-way, esplanades and entrances within and adjacent to the boundaries of the ██████████. It is common for a shopping mall, retail center, or commercial building or the like to maintain areas such as the right-of-way and esplanades encompassed along its boundaries. Therefore, you are primarily providing a service to the businesses located in the ██████████ as distinguished from promoting the common good and general welfare of the community.

As stated in your organizing document, you were formed to provide for the maintenance and preservation of all of the properties within ██████████, and to promote the health, safety and welfare of its property owners. You are not formed to promote the the common good and general welfare of the community.

Since the entire section of the ██████████ consists of commercial properties used by individuals and companies in the conduct of business, it is not a community for purposes of section 501(c)(4).

Further, you fail to provide evidence that your common areas are used by members of the community at large, who are not the property owners of the ██████████ to conduct recreational activities. You state that the primary reason for pursuing tax exemption under section 501(c)(4) is that it would enable you to obtain exemption from state sales taxes which are significant to your organization. Such a purpose is not within the meaning of section 501(c)(4).

Since you are primarily engaged in maintaining and preserving the common areas of the ██████████, and you define the term "common area" to include all personal and real properties utilized by your organization for the common use and enjoyment of the property owners, you are not primarily operated to promote the common good and general welfare of the people of a community. Therefore, you are not a civic league or social welfare organization described in section 501(c)(4).

We also conclude that you are not a homeowners' association or local association of employees described in section 501(c)(4) because you are not a membership organization composed of homeowners or employees, and you are not operated primarily for one or more exempt purposes specified in section 501(c)(4).

In light of the above, we propose that you do not qualify for tax exemption under section 501(a) as an organization described in section 501(c)(4) of the Internal Revenue Code.

Accordingly, you should file federal income tax returns reporting the amounts of your taxable income and tax due on Form 1120.

[REDACTED]
[REDACTED]
If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible. You should also file the enclosed Federal income tax return(s) within 30 days with the Chief, Employee Plan/Exempt Organization Division 1100 Commerce, Dallas, Texas 75242.

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

Sincerely,

Bobby E. Scott

District Director
Bobby E. Scott

Enclosures:
Publication 892
Form 6018