

INTERNAL REVENUE SERVICE
District Director

Department of the Treasury

P.O. Box 30224
Laguna Niguel, CA 92607-0224

Date: December 23, 1996

[REDACTED]
[REDACTED]
[REDACTED]
Case Number: [REDACTED]

Contact Person: [REDACTED]

Contact Telephone Number: [REDACTED]

Response Due: [REDACTED]

Dear Applicant:

This is in reference to your application for exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code.

Section 1.501(c)(4)-1 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. The providing of benefits to a narrow group of recipients, in most instances, is not considered as promoting social welfare. Homeowners' and tenants' associations are two types of organizations which aid in further defining the emerging concept of social welfare and the concomitant principle of community benefit.

In Revenue Ruling 72-102, 1972-1 C.B. 149, the IRS held that a membership organization formed by a developer to administer and enforce covenants for preserving the architecture and appearance of a housing development and to own and maintain common green areas, streets, and sidewalks for the use of all development residents was exempt under Internal Revenue Code section 501(c)(4). The rationale for this ruling was based on the conclusions that the housing development constituted a community, that the organization primarily benefited the community, and that the benefit to the developer and the property owner-members was only incidental to the goal to which the organization's activities were directed. This ruling has been modified and clarified by Revenue Ruling 74-99, 1974-1 C.B. 131.

Revenue Ruling 74-99 provides that in order to qualify for exemption under IRC section 501(c)(4), a homeowners' association: must serve a "community" which bears a reasonable recognizable relation to an area ordinarily identified as governmental; it must not conduct activities directed to the exterior maintenance of private residences; and the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public. The foregoing revenue ruling clarifies misconceptions generated by Rev. Rul. 72-102, in three respects. The first misconception is that Rev. Rul. 72-102 appears to unqualifiedly equate a housing

development with the term "community" within the meaning of IRC 501(c)(4). Rev. Rul. 74-99 rejects the acceptance of such a narrow definition of "community" and provides that while an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term as used in the section has traditionally been construed as having reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as governmental subdivision or a unit thereof.

A second misconception raised by Rev. Rul. 72-102 relates to whether an organization whose program includes, but is not limited to, activities directed to exterior maintenance of private residences may qualify for recognition of exemption under IRC 501(c)(4). Rev. Rul. 74-99 clarifies the foregoing by indicating that exterior maintenance activities reinforce the prima facie presumption that an organization is operated essentially for private benefit.

The third misconception involves interpretation of the phrase "non-residential, non-commercial properties of the type normally owned and maintained by municipal government" in determining what kinds of common areas or facilities an exempt homeowners' association may own and maintain. Rev. Rul. 72-102 was misleading in that it refers to "common green areas, streets, and sidewalks" with respect to the areas and facilities owned and maintained by the organization described therein. Rev. Rul. 74-99 points out that Rev. Rul. 72-102 was designed to indicate that the only areas and facilities encompassed were those traditionally recognized and accepted as being of direct governmental concern in the exercise of the powers and duties entrusted to governments to regulate community health, safety, and welfare. Only the ownership and maintenance by a homeowners' association of such areas as roadways and parklands, sidewalks and streetlights, access to, or the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to members of the homeowners' association is considered appropriate and consistent with exemption under IRC 501(c)(4).

Several questions raised in connection with Rev. Rul. 74-99 were answered in Rev. Rul. 80-63, 1980-1 C.B. 116, which states that no hard and fast rule can be applied as to what constitutes a "community," but that each case must be examined to determine whether the activities of the organization have sufficient community benefit to serve a social welfare purpose under IRC 501(c)(4). Although Rev. Rul. 80-63 brings out the point that a homeowners' association that does not represent a community cannot restrict the use of its facilities and areas and be exempt under IRC 501(c)(4), it does not necessarily follow that an association which does represent a community may exclude the general public from the use of its facilities. Rev. Rul. 80-63 points out that an association that is exempt under IRC 501(c)(4) can separate a facility such as a swimming pool into a separate organization which may qualify for exemption under IRC 501(c)(7).

On review of your [redacted] response, it appears that your organization will be responsible for keeping up the exterior of

the buildings, painting, roofing, etc., as well as, maintaining the front yard landscaping of each town home. You also stated that the general public will not have access to any of your facilities, such as the soccer field, tennis court, basketball court, and park area.

Therefore, it appears that your organization does not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Code.

Internal Revenue Code section 528 provides an elective exemption for certain homeowners associations that are described in section 528(c). Section 528 provides that the exempt function income (homeowner dues of the association) will not be taxed under certain circumstances. This Code provision was enacted because most homeowners association found it difficult to meet the requirements for exemption under IRC 501(c)(4) as set forth in Rev. Rul. 74-99. Associations that elect section 528, do so by filing the return Form 1120-H with their respective Service Centers.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018, Consent to Proposed Adverse Action.

If you are not in agreement with our position, please respond accordingly presenting your position, including any additional information, in this matter.

If, after considering your position and other additional information, we still conclude that you do not qualify for exemption, a letter will be issued setting forth our position and explaining your rights of appeal. We are enclosing a copy of Publication 892 which explains your appeal rights at that point.

Please respond by the date indicated in the heading of this letter.

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. 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 1024.

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

Thank you for your cooperation.

Sincerely yours,

Stephanie Miller
Exempt Organizations Specialist

INTERNAL REVENUE SERVICE
District Director

DEPARTMENT OF THE TREASURY

McCaslin Industrial Park
2 Cupania Circle
Monterey Park, CA 91755-7431

DATE:

MAR 10 1997

Employer Identification Number:
[REDACTED]

Case Number:
[REDACTED]

Contact Person:
[REDACTED]

Telephone Number:
[REDACTED]

[REDACTED]

Dear Applicant:

This is in reference to your application for exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code.

In a previous contact made with your organization, you were informed that it was our opinion that you did not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Code. We have previously informed you of your rights of appeal in this matter, and if you were in agreement with our conclusion, we requested that you execute an agreement Form 6018.

You have indicated your agreement to our conclusion that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) by executing and returning the Consent to Proposed Adverse Action Form 6018.

Accordingly, we conclude that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Code and, furthermore, contributions made to you are not deductible by donors for Federal income tax purposes.

Sincerely yours,


District Director

Form 6018 (Rev. 8/83) | Department of the Treasury-Internal Revenue Service | Prepare in Duplicate
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Service)

Case Number _____ Date of Latest Determination Letter _____
Employer Identification Number _____ Date of Proposed Adverse Action _____

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

Nature of Adverse Action

- Denial of exemption
- Revocation of exemption, effective _____
- Modification of exempt status from section 501(c)() to 501(c)(), effective _____
- Classification as a private foundation (section 509(a)), effective _____
- Classification as a non-operating foundation (section 4942(j)(3)), effective _____
- Classification as an organization described in section 509(a)(), effective _____
- Classification as an organization described in section 170(b)(1)(A)(), effective _____

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records. If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to declaratory judgement under section 7428.

(Signature instructions are attached)

Name of Organization _____
Signature and Title _____ Date _____
Signature and Title _____ Date _____