

Internal Revenue Service

Department of the Treasury

District
Director

Delaware-Maryland District

31 Hopkins Plaza, Baltimore, MD 21201

[REDACTED]

Person To Contact:

[REDACTED]

Telephone Number:

[REDACTED]

Date: JUL 20 1999

CLRTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information you submitted indicates that you were incorporated on [REDACTED] [REDACTED] Your stated purposes are: "to provide for maintenance, preservation and architectural control of common areas and roads within that certain tract or parcel of real estate described as [REDACTED] and any and all properties which may be annexed thereto in accordance with the provisions of the declaration, reservations and restrictive covenants. To promote the health, safety, and welfare, and in furtherance of the interests of owners of the above described real estate in [REDACTED]

Your application indicates that there are [REDACTED] in this subdivision. You have indicated that your activities will include "insuring the main subdivision gravel road and common areas (i.e. river access parking lot) within the community are maintained for safe travel for owners and the general public who have free and open access to the subdivision. Members of a local hunting club are guaranteed access to its property via the subdivision road and, though asked, refused to contribute road maintenance fees. Routine road maintenance activities include brush removal before [REDACTED] as well as snow removal after an accumulation of 6 inches. [REDACTED] will not maintain the [REDACTED] miles of subdivision road and river parking lot common area. The initial upgrade of the subdivision road occurred in [REDACTED] expense; another portion of the road is due for repair in [REDACTED]. Due to concerns expressed by owners with children and pets, two speed limit and children warning signs were purchased and installed. You publish a bi-monthly community newsletter to remind owners of annual fees, provide community updates, and other topics of interest, and conduct periodic association meetings.

You derive your income from an annual lot owner assessment for road maintenance. This assessment was \$ [REDACTED] per lot owner for [REDACTED]. Special one-time assessments may be levied for major, unforeseen expenses. Your expenses are attributable to: Road repairs, liability insurance, attorney retainer fee, road signs, brush removal, bank fees, and snow removal (when necessary).

Section 501(c)(4) of the Internal Revenue Code provides for exemption from Federal income tax for organizations that are civic leagues or organizations not formed 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.

[REDACTED]

[REDACTED]

Income Tax Regulations 1.501(c)(4)-1(a)(2)(i) provides that to be exempt as an organization promoting social welfare, the organization must be exclusively engaged in promoting in some way the common good and general welfare of the community. An organization embraced within this section is one, which is operated for the purpose of bringing about civic betterment and social improvements.

Revenue Ruling 72-102, published in Cumulative Bulletin 1972-1 on page 149, states that a non-profit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for the use of residents is exempt under section 501(c)(4) of the Code. Membership is required of all owners of real property in the development and assessments are levied to support the organization's activities. It was held that by maintaining the property normally maintained by municipal governments, the organization served the common good and general welfare of the people of the community.

Revenue Ruling 74-99, published in Cumulative Bulletin 1974-1 on page 131 modified Revenue Ruling 72-102 by stating guidelines which a homeowners association could qualify for exemption under section 501(c)(4) of the Code. One guideline is that a homeowners association must serve a community which bears a reasonable recognizable relationship to an area ordinarily identified as governmental in order to qualify under section 501(c)(4) of the Code.

This ruling reads in part: "A community within the meaning of section 501(c)(4) and the Regulations is not simply an aggregation of homeowners bound together in a structural unit formed as an integral part of a plan for the development of a real estate division and the sale of homes therein. Although an exact delineation of the boundaries of a "community contemplated by section 501(c)(4) is not possible the term is used in that section 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 thereof."

Revenue Ruling 74-99 states that Revenue Ruling 72-102 was intended only to approve ownership and maintenance by a homeowners association of such areas as roadways and parklanes, sidewalks and streetlights, access to, or the use and enjoyment of which is intended to members of the general public as distinguished from controlled use or access restricted to the members of the homeowners association..."

You are not a "community" as described by Revenue Ruling 74-99. You do not maintain areas that are accessible or usable by the general public. Your purpose is the maintenance of the private road that services your [REDACTED] lot owners. Any use by the public is purely incidental.

Meeting minutes from your second annual meeting on [REDACTED] indicate that your organization is contemplating constructing a deck and pavilion on adjacent river property. [REDACTED] of the minutes discusses actions to be taken to prevent non-member usage of the facilities, including the construction of a fence, installation of signs and patrols by [REDACTED] - clear indications of controlled use and restricted access for members only.

Therefore, you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Code. In accordance with this determination, you are required to file Form 1120 for Federal income tax purposes.

Your attention is called to Code section 528, which was added by the Tax Reform Act of 1976. This section provides that, in certain circumstances, a non-exempt homeowners association may elect not to be taxed on its "exempt function income" which includes membership dues, fees or assessments from owners

[REDACTED]

of real property. Filing Form 1120H makes this election. If you determine that your organization qualifies under section 528, you may find it beneficial to make this election.

If you do not accept our findings, we recommend that you request a conference with a member of our Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If someone who is not one of your principal officers will represent you, he or she will need to file a power of attorney or tax information authorization with us. If you do not appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter.

Sincerely,

Mary Mexico

Acting District Director

Enclosures:
Publication 892