

Internal Revenue Service

Department of the Treasury

District
Director

1100 Commerce St., Dallas, Texas 75242

Date: OCT 20 1995

Employer ID Number:
[REDACTED]

Person to Contact:
[REDACTED]

Telephone Number:
[REDACTED]

Refer Reply To:
EO:TS:4920DAL:RH

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code.

A review of the information submitted reveals that you incorporated in the State of [REDACTED] on [REDACTED]. Your purposes are to promote the civic interests of persons owning or occupying lots, and to promote the social welfare, safety, and health of such persons, and to help enforce the protective covenants, restrictions and conditions pertaining to [REDACTED]. It is also a means of conveying information of common interest to the members, i.e., [REDACTED] requirements, county road maintenance and any other problems or concerns that may occur from time to time. The only common area that you maintain is a boat ramp that you presume to be public because you have no private or keep out signs posted and there are no persons checking to see what the status of those using the ramp are. You pay a fee to the Electric company for a night light.

The [REDACTED] subdivision is composed primarily of residential homes located within the State of [REDACTED] in [REDACTED] County. The area on the north is [REDACTED], a man made lake controlled by [REDACTED]. The area on the east and south area is [REDACTED]. The area on the west is state Highway [REDACTED]. The subdivision is located approximately nine to ten miles south of [REDACTED].

Section 1.501(c)(4)-1(a)(2)(i) 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. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements."

Section 1.501(c)(4)-1 of the regulations provides, if part, as follows:

(a)(1) In general. A civic league or organization may be exempt as an organization described in section 501(c)(4) if -

- (i) It is not organized or operated for profit; and
- (ii) It is operated exclusively for the promotion of social welfare."

"(a)(2)(i) An organization is operated exclusively for the promotion of social welfare when 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 betterments and social improvements *** The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit.***"

Rev. Rul. 74-99, 1974-1, C. B. 131, holds that in order for a homeowners' association to qualify for exemption under IRC 501(c)(4) of the Code, it must have the following characteristics:

1. The organization must serve a community which bears a reasonable recognizable relationship to an area ordinarily identified as governmental.
2. It must not conduct activities directed to the exterior maintenance of private residences; and
3. The common areas or facilities must be for the use and enjoyment of the public, as distinguished from controlled use or access restricted to the members of the homeowners' association.

Rev. Rul. 80-63, 1980-1 C.B. 115, states that a homeowners' association which represents an area that is not a community and restricts the use of its recreational facilities, such as swimming pools, tennis courts, and picnic areas to members of the association does not qualify for exemption.

In Rancho Santa Fe Association v. United States, 84-2 U.S.T.C. 9536 (S.D. Cal. 1984) the Court held that Rancho Santa Fe Association, Inc. falls within the definition of a tax exempt organization devoted to the promotion of the general welfare. It performs the functions of a governmental entity and brings about civic betterments and social improvements that would be sorely missed by the Rancho Santa Fe community should they be lost or curtailed. Rancho Santa Fe Association, Inc. provides recreational facilities in the form of a golf course, numerous tennis courts, playgrounds, athletic fields, parklands, hiking trails, bridle trails and open spaces. Over two-thirds of the Association's land is devoted to common areas. Rancho Santa Fe is a housing development, significant in size and self-contained in orientation. It is not the ordinary residential grouping of tract homes, but is an independent community separated geographically from the central area of the city of San Diego of which Rancho Santa Fe is a sub-part. Rancho Santa Fe has its own post office and zip code. The association benefits the community it serves and represents on an unrestricted basis.

In Flat Top Lake Association, Inc. v. United States, 86-2 U.S.T.C. 8755 (S.D.

U. Va 1986) the Court held that a homeowners' association was not entitled to exempt status as a civil league or organization under Code Sec. 501(c)(4). The association did not provide benefits of a public welfare nature to the public or a definable community because the association's facilities were restricted to the use of its members. In order to be qualified for tax exempt status, homeowners' association must show that (1) it is a non-profit organization; (2) it is a civic organization operated for the promotion of social welfare; and (3) it promotes social welfare by being engaged in promoting in some way the common good and general welfare of the community.

Lake Forest, Inc. v. United States, 62-2 U.S.T.C. held that a nonprofit corporation organized by World War II veterans and others to buy a housing project from the Public Housing Administration was not exempt from tax as a "civic" organization or as a "social welfare" corporation.

In Better Business Bureau v. United States, 326 U.S. 279, 283 (1945) "... [I]n order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

We also considered your organization under section 501(c)(7) of the Code. This section provides for the exemption of clubs organized for pleasure, recreation, and other non-profitable purposes, substantially all of the activities of which are for such purposes, and no part of the net earnings of which inures to the benefit of any private shareholders.

Rev. Rul. 75-494, 1975-2 C.B. 214, provides that a club providing social and recreational facilities, whose membership is limited to homeowners of a housing development, will not qualify for exemption under section 501(c)(7) of the Code by owning and maintaining residential streets, enforcing restrictive covenants, or providing residential fire and police protection and trash collection services.

Based on the information presented, we have concluded that you do not meet the requirements for exemption as a social welfare organization described in section 501(c)(4) of the Internal Revenue Code. Your organization does not serve a community which bears a reasonable recognizable relationship to an area ordinarily identified as governmental. You are not a community like the one described in Rancho Santa Fe Association v. United States, 84-2 U.S.T.C. 9536 (S.D. Cal. 1984). The common area that you maintain is very small in size in proportion to your total size. You do not have any recreational areas open to the public. You do not have your own post office and zip code. Except for the fact that you do not restrict the use of your boat ramp to members only your organization is somewhat like the organization described in Flat Top Lake Association, Inc. v. U.S. in which the real issue is whether your organization confers tangible and concrete benefits of a public welfare nature upon the public at large or a definable community. [redacted] lacks certain indicia of a community such as churches, schools or stores. Your organization also resembles the organization described in Lake Forest, Inc. v. United States. In Lake Forest, Inc. v. United States property consisted of one-story residential buildings purchased from the Public Housing Administration. Property within [redacted] consists mostly of residential

property purchased from a developer. Your organization does not propose to offer a service or program for the direct betterment or improvement of the community as a whole. Your organization is not a charitable corporation in law or equity, for its contribution is neither to the public at large nor of a public character. Facts presented show that your organization is not "civic", but simply a private cooperative organization; its operation is not a work of "social welfare" but a private economic enterprise albeit in the interest of some of the citizens; and even if its objects include a contribution to social welfare, that is not its aim "exclusively." Your organization seems to be organized for private benefit rather than exclusively for the promotion of social welfare.

Also based on the information presented, we have concluded that you do not meet the requirements for exemption as a social and recreational club described in section 501(c)(7) of the Internal Revenue Code. Your membership is limited to homeowners of a housing development and you enforce restrictive covenants within your by laws which are similar activities to those described in Rev. Rul. 75-494.

Accordingly, it is held that you are not entitled to exemption from federal income tax as an organization described in section 501(c)(4) or section 501(c)(7) of the Code, and you are required to file income tax returns on form 1120.

As a homeowners association, you may qualify for treatment under section 528, a section of the Code created by the Tax Reform Act of 1976. In this letter we are not ruling on the question of whether you qualify for treatment under section 528. However, if you believe you qualify for such treatment, you should file Form 1120-H when due.

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.

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

Sincerely,



District Director



Enclosures:
Publication 892
Form 5018