



EP/EO: Tech. Staff

CERTIFIED MAIL

AUG 1 1983

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.

Information submitted shows that you were incorporated under the Non-Profit Corporation Law of [redacted] on [redacted]. Your purposes are to provide for maintenance, preservation, and architectural control of the residence Parcels in [redacted], except as recorded in the Recorder's office of [redacted], and to promote the health, safety and welfare of the residents within such property.

You are a membership organization. Your membership is limited to, and required of, owners of homes in the development known as [redacted].

You are supported by fees and assessments of the members, including penalty assessments, and investment income.

You did not provide any statement of activities as such, nor were you responsive to specific questions asked in development of the application. However, financial statements show that in addition to grounds maintenance and administrative expenses, you incur substantial expenses for maintenance and operation of a pool, tennis court, and community building. Further, you indicate you operate in accordance with your articles, by laws, and the Deed of Covenants for the property.

The Deed of Covenants indicate you were formed to protect the value of the property, and binds you to exterior maintenance of dwellings and other private property as necessary to achieve this purpose, as well as architectural control for the same purpose. You are also bound by the Deed of Covenants to maintain any lots which have not been sold and/or registered.

Lot ownership in the development requires membership in the association. The development, however, is exempted by the Deed of Covenants from paying dues for membership representing unsold lots.

20043 Initiator [redacted] Reviewer [redacted] [redacted]

Initials	[redacted]	Reviewer	[redacted]
Date	1/27	Reviewer	8/1/83

Section 501(c)(4) of the Code provides for the recognition of exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

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 in 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.

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 betterments and social improvements.

Revenue Ruling 72-102, 1972-1 C.B. 149 holds that a non-profit organization formed for the purpose to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for the use of the residents is exempt under section 501(c)(4) of the Code.

However, Revenue Ruling 74-99, 1974-1 C.B. 131 which modifies Revenue Ruling 72-102, holds that a homeowners association formed in conjunction with a real estate development is prima facie presumed to be operated for the private benefit of its members. In order to overcome this presumption, a homeowners association must have the following characteristics:

1. It 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 general public.

It was stated in this Revenue Ruling that this arrangement created a prima facie presumption that the organization is operated essentially for private benefit. It was held that areas and facilities owned and maintained by the organization must be limited to areas such as roadways, parklands, sidewalks, streetlights, access to which is extended to the general public.

The term "general public" means the general populace, anyone and everyone, as opposed to members of a particular association and their guests.

It is not clear from information submitted whether the grounds (including roads and driveways) you maintain are open to the public. However, the information submitted does clearly show that certain recreational areas you maintain and operate (the pool and community building) are restricted to members or members and guests and are not open to the public. The tennis courts are presumed also to be unavailable to the general public.

Further, you indicate you will enforce the Deed of Covenants, including maintenance of private dwellings or property if necessary, and the documents submitted indicate you may be taking care of, or have taken care of lots owned by the developer.

Therefore, we conclude that you are operated primarily for the private benefit of the members, and any public benefit is incidental to private benefit. Accordingly, we hold that you do not qualify for recognition of exemption from Federal income tax as a social welfare organization described in section 501(c)(4) of the Code. You are required to file Federal income tax returns on Form 1120 (or 1120H if to your advantage).

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office or, if you request, at any mutually convenient District office. If we do not hear from you within 30 days of the date of this letter, this determination will become final.

Sincerely yours,

  
District Director