

[REDACTED]
[REDACTED]
[REDACTED]
JAN 27 1992

CERTIFIED 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 tax exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted indicates that you were incorporated on [REDACTED] under the non-profit laws of the State of [REDACTED]. The purposes in your Articles read "... to provide for: (i) the use, improvement, maintenance, operation and repair of the common areas and roads located in [REDACTED] subdivision in the [REDACTED] including any improvements and amenities located thereon; (ii) the establishment of rules and regulations for the use of Common Areas including any improvements and amenities located thereon; (iii) the distribution among the owners of the property and the lots therein of the costs of the use, improvement, maintenance and repair of the common areas including any improvements and amenities located thereon; and (iv) the promotion of the health, safety, pleasure, recreation and welfare of the residents of the lots..."

In your bylaws your stated purposes are "... to provide an organization to serve and promote the common interests of the owners within the Subdivision; to preserve property values; to promote the security and welfare of all Owners; and to own, acquire, build, operate and maintain the common road known as [REDACTED] and other facilities for the benefit of the Owners."

The common areas consist of "... the approximately [REDACTED] miles of two lane blacktop road, a ramp leading to [REDACTED] which is about [REDACTED] feet long and [REDACTED] feet wide. It is unpaved gravel. The pier is made of treated wood and is [REDACTED] by [REDACTED] feet. These are the only common areas."

[REDACTED]

A wood entrance sign announces "[REDACTED] A Private Community." [REDACTED] is a peninsula in a rural area approximately [REDACTED] miles from the nearest town or village. It was developed in the [REDACTED]'s by [REDACTED], and all lots were sold by the early [REDACTED]'s. It consists solely of [REDACTED] lots of less than one acre, most of which now have houses on them. The property is connected to a country road ([REDACTED]) by a private road built and maintained by the developer until [REDACTED]. At that time, it was taken over by the [REDACTED]. The private road passes through open country for approximately [REDACTED] miles, and through the development for a total of approximately [REDACTED] miles. This road and the boat ramp constitute the only common property of [REDACTED].

Your Covenants, Restrictions, Conditions and Amended Bylaws provide that a member "... shall refer to each Owner of a holder of real property within the Subdivision," and that the Board of Directors' powers and responsibilities include adoption & publication of Rules and Regulations governing the use of the road, community pier, boat ramp and facilities and the personal conduct of the members and their guests thereon."

Non-members do not have access to the ramp and the pier. Non-members only have access to visit members' premises. On rare occasions, non-members attempt to use the ramp and are reminded by your members and officers that this property is not available for use by non-residents.

Your income is derived from membership dues, special assessments and interest. Your fees are determined annually by the vote of [REDACTED], on the basis of the needs foreseen for the improvement or maintenance of the common areas.

Your activities and expenses reflect paving and maintenance of road, maintenance of boat ramp and the purchase and installation of signs. Your association provides for grading, plowing, repair and general upkeep of [REDACTED] roadway. This work is generally contracted out and sometimes performed by community members as volunteers for no fee.

The Association, through its Board of Directors maintains and enforces the community covenants in accordance with the bylaws.

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 501(c)(4)-1(a)(2)(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. An organization embraced within this section is one which is operated for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 72-102, 1972-1 C.B. 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 use of the 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 a municipal government, the organization served the common good and general welfare of the people of the community.

Revenue Ruling 74-99, 1974-1 C.B.131, modified Revenue Ruling 72-102 by stating guidelines under which a homeowner's association could qualify for exemption under section 501(c)(4) of the Code. These guidelines are:

1. The organization must service a "community" which bears a reasonable, recognizable relationship to an area ordinarily identified as a governmental unit.
2. It must not conduct activities directed to the exterior maintenance of private residences; and
3. The common areas of facilities must be for the use and enjoyment of the general public.

This ruling states that a community, within the meaning of section 501(c)(4) of the Code and the regulations, "... is not simply an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision and the sale and purchase of homes therein."

Revenue 74-99 states that it modifies the misconception given in Revenue Ruling 72-102 that a housing development is to be equated with the term "community" within the meaning of section 501(c)(4) of the Code, thereby giving rise to the implication that any housing development may qualify as a community for exemption purposes regardless of other facts in the case. The term "housing development" is not to be viewed as necessarily coextensive with the term "community", so that not every association which oversees a housing development is entitled to claim the exemption.

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 parklands, sidewalks, and street lights, 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 the members of the homeowners' association..."

[REDACTED]

Your common areas are not open for the use and enjoyment of the general public. You are operating for the private benefit of members, i.e. lot owners, and not for the benefit of the general welfare of the people of the community.

Your services do not benefit the community because they are limited to the [REDACTED] lot owners served by your association.

One of the purposes of Revenue Ruling 74-99 is to preclude recognition of exemption of homeowners associations that serve a private rather than a public interest.

Revenue Ruling 80-63 published in Cumulative Bulletin 1980-1 on page 116 brings out the point that a homeowner's association that does not represent a community cannot restrict the use of its facilities and areas and be tax exempt under 501(c)(4).

Based on the information submitted and the applicable law cited above, we conclude that you are primarily organized and operated to provide services for the personal benefit of your members and not primarily for promoting in some way the common good and general welfare of the people of the community. Therefore, you do not qualify for exemption from federal income tax as an organization described in section 501(c)(4) of the Code.

Until you have established exempt status, you are not relieved of the requirement for filing federal income tax returns.

Your attention is called to section 528 of the Internal Revenue Code 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 of real property. The election is made by filing Form 1120H. If you determine that your organization qualifies under section 528, you may find it beneficial to make this election.

If you do not agree with our determination, you may request consideration of this matter by the 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 you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

[REDACTED]

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 yours,

[REDACTED]

District Director

Enclosure: 892