

Internal Revenue Service

Department of the Treasury

District  
Director

[REDACTED]

Date: MAR 18 1996

Employer ID Number:  
[REDACTED]

Person to Contact:  
[REDACTED]

Telephone Number:  
[REDACTED]

Refer Reply To:  
[REDACTED]

[REDACTED]

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.

The information submitted indicates that you incorporated in the State of [REDACTED] on [REDACTED]. Article IV of your Articles of Incorporation states that you shall have the following purposes:

- To maintain, care for and repair the real or personal property which you own, including the common areas and the improvements thereon;
- To adopt and enforce rules and regulations;
- To levy and collect assessments from your members;
- To enforce the provisions of the Declaration; and
- To exercise all the powers and privileges and to perform all of the duties and obligations as set forth in the Declaration.

Article VI of your Articles of Incorporation states that your members shall consist of each owner (including the Declarant and ground lessor) and every lessee of any parcel or other portion of [REDACTED] other than the common areas.

Article VII of your Articles of Incorporation states the member shall be entitled to cast a number of votes which is equal to the percentage of the regular assessments allocated to them. For example, if [REDACTED]% of the assessments are allocated to a parcel, then the owner or lessee of such parcel shall be entitled to [REDACTED] votes on any matter submitted to a vote by the members.

Article VIII of your Articles of Incorporation states that your board of directors shall consist of [REDACTED] members. The initial board and each board serving thereafter for [REDACTED] years from [REDACTED] shall be appointed by the Declarant. Thereafter, [REDACTED] of the directors shall be appointed by the Declarant, and [REDACTED] of the directors shall be elected by the members.

The minutes of the meeting of your board of directors held [REDACTED] shows that [REDACTED] has been appointed to act as your Management

Agent. [REDACTED] handles all of your day-to-day duties, and does not receive any compensation from you for these services.

Your 1024 application for exemption states that you formed to maintain all common area landscaping in [REDACTED], a [REDACTED] acre, mixed-use business park located in [REDACTED]. You maintain approximately [REDACTED] miles of landscape which is not privately owned.

The maintenance includes tree trimming, shrub trimming, weed control, irrigation system upkeep, fertilizing, open channel maintenance and trash pickup. The maintenance has two goals: safety and aesthetics.

You also enforce the compliance of the the covenants, conditions and restrictions as set forth in the Declaration.

Your primary source of financial support is the dues and assessments of your members. Your other source of income is investment income. The gross dues and assessments assessed your members is as follows:

Member	[REDACTED]	[REDACTED] (est)
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Total	\$ [REDACTED]	\$ [REDACTED]

Your expenses include landscaping, maintenance, occupancy and administrative expenses.

A copy of the Declaration of Covenants, Conditions and Restrictions for [REDACTED] dated [REDACTED] was provided. Section 1.10 of the Declaration states that the common areas shall include private roadways, pavement, curbs, sidewalks, lights, landscaped areas, parking areas, open spaces, drainage and retention areas, buildings and other property and or improvements.

Section 9.6.5 of the Declaration states that the regular assessments shall be allocated among the parcels and other portions of the center in proportion to their respective areas.

Your correspondence dated [REDACTED] states the following:

- You do not maintain any private improvements. You maintain only public property that is in defined rights-of-way and easements and are dedicated to the City of [REDACTED]. The trash collection is for garbage on streets or sidewalks, not on private property:
- [REDACTED] is the administrator of the [REDACTED] development park. It markets the undeveloped property to businesses interested in buying or leasing land at the center:
- You have three officers: President, Secretary and Treasurer. The individuals that hold these offices hold the same offices for [REDACTED]:
- [REDACTED] does not receive compensation from you for handling your day to day duties because this keeps the maintenance charges at a minimum and enhances the marketing effort. The more competitive your assessments are, the more likely [REDACTED] will attract development:
- There are currently [REDACTED] undeveloped acres. [REDACTED] must pay the assessments for those acres that are unoccupied.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(4) Civic leagues or organizations not organized 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."

Section 1.501(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 primarily for the purpose of bringing about civic betterment and social improvements."

The Revenue Ruling 72-102, 1972-1 C.B. 149 holds 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 is exempt under section 501(c)(4).

The Revenue Ruling 74-99, 1974-1 C.B. 131, modified and clarified Revenue Ruling 72-102. It provides that in order to qualify for exemption under IRC 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.

According to the Revenue Ruling 80-63, 1980-1 C.B. 116, 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 the area represented by an association may not be a community, if the association's activities benefit a community, it may still qualify for exemption. This revenue ruling also establishes that the owning and maintaining of parking facilities for the use of its members is for the private benefit of its members, and not for the promotion of social welfare within the meaning of section 501(c)(4) of the Code.

You can be distinguished from a homeowners' association because you are not a membership organization formed and controlled by member-homeowners. There are no residents in [REDACTED]. The buildings located within the boundaries of [REDACTED] are utilized by individuals and companies in the conduct of their businesses. Therefore, you are not a homeowners' association as described in the Revenue Ruling 72-102 and 74-99.

You are organized primarily to maintain and landscape the common areas of the [REDACTED] business park. A business park cannot be considered a community since it is not a geographical unit bearing a reasonably recognized relationship to an area ordinarily identified as a governmental subdivision, district or unit. In fact, [REDACTED] is a commercial development which provides a place for individuals and companies to conduct business.

You do not restrict the general public access to the common areas of [REDACTED] business park because the business owners use the buildings located within the boundaries of the business park to conduct business with the general public. While the general public has access to your business park, a member of the general public would have no reason to enter your business park unless he or she has business with one of the companies located within your business park.

In order for the businesses located in [REDACTED] to attract and serve customers, it is necessary for them to pay assessments to your organization for maintaining and landscaping the common areas, rights-of-way, esplanades and entrances within and adjacent to the boundaries of [REDACTED]. It is common for a shopping mall, retail center, commercial building or the like to maintain areas such as the right-of-way and esplanades encompassed along its boundaries. Therefore, you are primarily providing a service to the businesses located in [REDACTED] as distinguished from promoting the common good and general welfare of the community.

Each members assessment is based on the amount of square footage occupied by them. The services which you provide the member/tenants are based on the square footage that each utilizes. This is an indication that you are providing a commercial service for a fee. You are not similar to a homeowners' association because each member/resident in a homeowners' association is charged the same amount of dues.

Your activities enhance the [REDACTED] marketing of the unoccupied and undeveloped lots within the business park. By maintaining the common areas, you increase the attractiveness of the park to prospective businesses. Your officers and directors are also the officers and directors of [REDACTED]. Therefore, you are an integral part of [REDACTED].

Since you are providing a service for a fee, and you are not made up of

homeowners. you are not a homeowners' association, and do not qualify for treatment under IRC 528. Therefore, you should not file Form 1120-H.

Accordingly, it is held that you are not entitled to exemption from Federal income tax as an organization described in IRC 501(c)(4), and you are required to file Federal income tax returns on Form 1120.



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 6018