

Internal Revenue Service

District
Director

Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO

Employer Identification Number:

Date:

DEC 02 1993

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income-tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 8927, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of

[REDACTED]

attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

[REDACTED]

District Director

Enclosures: 3

ENCLOSURE I

[REDACTED]

The information submitted indicated that you were incorporated on [REDACTED] in the State of [REDACTED]. You filed Form 1024, Application for Recognition of Exemption under Section 501(a) as an organization described in section 501(c)(4) of the Internal Revenue Code on February 23, 1993.

The Articles of Incorporation state that the specific purposes for which the Corporation was formed are to promote the general welfare of the residences of the [REDACTED] area in [REDACTED] by giving special attention to the management, improvement, and betterment of the subdivision, and encouraging social intercourse among its members and doing any and all things necessary or incident thereto.

Your application Form 1024 reveals that your organization will conduct the following activities:

- a. Manage, maintenance, and development of all physical assets of the homeowners association, including maintenance, improvement, and development of common grounds.
- b. Monitor activities of local regulatory bodies and neighboring property owners, including interfacing with safety forces to insure adequate coverage to protect welfare of residents, building relationships with neighbors, and maintaining awareness of impending actions by local government that may impact the community.
- c. Organize activities to foster community amongst members of the association, including determining social activities of residents, welcoming new members, and planning social events.

Your application indicates there are two classes of membership, Class A and Class B. Class A members shall be the property owners within the [REDACTED] development and membership in the Association is mandatory. Each class A member shall be entitled to 1 -vote each. Class B membership will consist solely of the developer who will be entitled to 3 votes per each sublo still owned.

Your membership is not open to the general public. The association owns approximately [REDACTED] acres of "common grounds" which are open to residents of the [REDACTED] development, but not open to the general public. There is a sign at the main entrance to the common grounds which indicates "Maintenance Access Only - [REDACTED] Property Owners Association."

The organization's sources of revenue include membership assessments, income from residents for trees, and investment income. Expenses incurred include expenses for the maintenance and development of common

ENCLOSURE CONTINUED

grounds.

Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations states that a civic league or organization may be exempt if:

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

Section 1.501(c)(4)-1(a)(2) of the Regulations states in general that:

- (i) an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting 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.
- (ii) 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.

Specifically under section 501(c)(4) of the Code, a homeowners' association must operate for the benefit of the general public, i.e., it must provide a community benefit. Our position regarding the exemption of homeowners' association under section 501(c)(4) is set forth in a number of revenue rulings.

Revenue Ruling 74-99, 1974-1 C.B. 131, describes the circumstances in which a homeowners' association may qualify for exemption under section 501(c)(4) of the Internal Revenue Code. The ruling states that three elements must be satisfied:

- 1) it must serve a "community" which bears a reasonably recognizable relationship to an area ordinarily identified as governmental;
- 2) it must not conduct activities directed to the exterior maintenance of private residences and,

ENCLOSURE CONTINUED

- [REDACTED]
- 3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

The ruling also states that a "community", within the meaning of section 501(c)(4) of the Code, is not merely "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 purchases of homes therein."

Revenue Ruling 80-63, 1980-1 C.B. 116, addresses pertinent questions as to whether the conduct of certain activities will affect the exempt status under section 501(c)(4) of the Code or otherwise qualifying homeowners' association. The ruling states that:

- 1) the term "community" does not embrace a minimum area or a certain number of homeowners,
- 2) a homeowners' association may not receive an exemption if it represents an area that is not a community and it restricts the use of its recreational facilities to only members of the association.
- 3) an affiliated recreational organization operated totally separate from the homeowners' association may be exempt so long as there is no benefit flowing back to any member, and
- 4) a homeowners' association cannot own and maintain parking for the sole use of its members if it is not a community.

Based on the above facts and upon the applicable law and precedent, [REDACTED] fails to qualify for exemption under section 501(c)(4) of the Code because the common areas are available only to the community of the homeowners, not to the community of the governmental district in which they are located. In this respect [REDACTED] fails to meet the criteria for exemption established in Rev. Rul. 74-99, 1974-1 C.B. 131 and Rev. Rul. 80-63, 1980-1 C.B. 116.