

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

May 17, 2000

### Legend

Date 1 =

Date 2 =

Taxpayer =

Date 3 =

Dear Sir:

This responds to your request, dated January 10, 2000, requesting permission to revoke elections under § 528 of the Internal Revenue Code for the taxable years ending Date 1 and Date 2.

For the taxable years ending Date 1 and Date 2, Taxpayer, a condominium association, hired an accountant to prepare its Federal Income Tax returns. The accountant prepared and submitted to Taxpayer returns prepared on Form 1120-H (U.S. Income Tax Return for Homeowners Associations) for each tax year. Taxpayer's accountant did not inform Taxpayer that by filing Form 1120-H, Taxpayer was making an annual election to be treated under § 528. Thus Taxpayer was not aware of the annual option to choose between filing Form 1120 (U.S. Corporation Income Tax Return) and Form 1120-H. On each occasion, Taxpayer's treasurer relied on the accountant's advice and signed the return. Both returns were filed with the Internal Revenue Service, thus making effective elections to be taxed as a homeowners association for both years under § 528.

For the taxable year ending Date 3, Taxpayer retained a new accountant to do its accounting and tax work. Based on his review, the new accountant informed Taxpayer that electing under § 528 was not in its best interests for the tax years ending Date 1 and Date 2. The use of Form 1120 would have resulted in a lower tax liability for those years because the income reported would have been subject to a lower marginal tax rate if a § 528 election had not been made. After discovering the filing of its tax returns on Form 1120-H was inappropriate, Taxpayer requested permission to revoke

PLR-104074-0

the § 528 elections for the tax years at issue so that it could calculate its federal income tax as a corporation using Form 1120.

Section 528 provides that certain homeowners associations may elect to be treated as tax-exempt organizations, but only to the extent of their exempt function income. Exempt function income consists solely of amounts received as membership dues, fees, or assessments from owners of residential units or residential lots.

Section 1.528-8(a) of the Income Tax Regulations provides that a separate election to be treated as a homeowners association under § 528 must be made for each tax year. The election is made by filing a properly completed Form 1120-H.

Section 1.528-8(f)(1) provides that an election to be treated as a homeowners association is binding on the organization for the taxable year and may not be revoked without the consent of the Commissioner.

Rev. Rul. 82-203, 1982-2 C.B. 109, and Rev. Rul. 83-74, 1983-1 C.B. 112, set forth situations in which the consent of the Commissioner was requested to revoke an election under § 528. These revenue rulings provided that considerations or factors similar to those described in Rev. Proc. 79-63, 1979-2 C.B. 578 (factors that were taken into consideration by the Commissioner in determining whether an extension of time for making an election will be granted under the former regulation § 1.9100-1) were appropriate in determining whether taxpayers would be permitted to revoke previous elections made under § 528. Factors that are given consideration are now found in §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations. When applied to a request for the revocation of § 528 election, these considerations require that the taxpayer requesting permission to revoke its election must establish that (1) the taxpayer acted reasonably and in good faith, and (2) the granting of relief would not prejudice the interests of the government.

Rev. Rul. 82-203, 1982-2 C.B. 109 holds that a homeowners association will not be permitted to revoke elections made under § 528 of the Code in previous years to obtain the benefit of a net operating loss incurred in a subsequent tax year.

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 through 301.9100-3 have been satisfied. Accordingly, permission to revoke the elections made under § 528 for the tax years ending on Date 1 and Date 2 is granted provided that the revocation is not sought in order to obtain the benefit of a net operating loss incurred in a subsequent tax year. We note that § 277 will apply to Taxpayer if a § 528 election is not in effect. See Rev. Rul. 90-36, 1990-1 C.B. 59.

PLR-104074-0

Taxpayer must file a properly completed Form 1120-X (Amended U.S. Corporation Tax Return) for both tax years within 30 days of the date of this ruling. A copy of this ruling should be attached to each tax return.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,  
Paul F. Kugler  
Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

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