

Internal Revenue Service

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Date:

September 10, 2001

re: Section 528 and qualification as a residential real estate management association

General Information Letter

Dear [REDACTED]:

This is in response to your letter, dated July 3, 2001, in which you inquired about the ability of a corporation to qualify as a "residential real estate management association" within § 528. You indicate that the corporation was established by and is comprised of real property owners in a mixed use community. The corporation owns, maintains and operates the common areas and improvements within the Community. The Community generally consists of private homes. However, there are commercial enterprises, such as a hotel conference center and a golf course.

Rev. Proc. 2001-1, 2001-1 I.R.B. 8, provides the procedures followed by the Internal Revenue Service (Service) for issuing letter rulings, determination letters, and general information letters. A letter ruling is a written statement issued to a taxpayer that interprets and applies the tax laws to the taxpayer's specific set of facts. Section 8 of the revenue procedure provides general instructions for requesting letter rulings and determination letters. Because your request does not comply with the requirements for a private letter ruling we cannot issue you a letter ruling.

However, we are providing this information letter. An information letter calls attention to a well-established interpretation or principle of tax law, without applying it to a specific set of facts. An information letter is advisory only and has no binding effect on the Service. If in addition to this information letter, you desire a letter ruling, you should submit a request for a ruling prepared in accordance with the instructions provided in Rev. Proc. 2001-1.

Section 528(c)(1) defines a homeowners association as an organization which is a condominium management association, a residential real estate management association, or a timeshare association if—

(A) such organization is organized and operated to provide for the

acquisition, construction, management, maintenance, and care of association property,

(B) 60 percent or more of the gross income of such organization for the taxable year consists solely of amounts received as membership dues, fees, or assessments from—

(i) owners of residential units in the case of a condominium management association,

(ii) owners of residences or residential lots in the case of a residential real estate management association, or

(iii) owners of timeshare rights to use, or timeshare ownership interests in, association property in the case of a timeshare association,

(C) 90 percent or more of the expenditures of the organization for the taxable year are expenditures for the acquisition, construction, management, maintenance, and care of association property and, in the case of a timeshare association, for activities provided to or on behalf of members of the association,

(D) no part of the net earnings of such organization inures (other than by acquiring, constructing, or providing management, maintenance, and care of association property, and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual, and

(E) such organization elects (at such time and in such manner as the Secretary by regulations prescribes) to have this section apply for the taxable year.

Section 528(c)(2) defines a condominium management association as any organization meeting the requirements of 528(c)(1)(A) with respect to a condominium project substantially all of the units of which are used by individuals for residences.

Section 528(c)(3) defines a residential real estate management association as any organization meeting the requirements of 528(c)(1)(A) with respect to a subdivision, development, or similar area substantially all the lots or buildings of which are used by individuals for residences.

Section 1.528-4(b) of the regulations provides that substantially all of the units of a condominium management association will be considered as used by individuals for

residences if at least eighty-five percent of the total square footage of all units within the project is used by individuals for residential purposes.

Section 1.528-4(c) of the regulations provides that substantially all of the lots or buildings of a residential real estate management association (including unimproved lots) will be considered as used by individuals as residences if at least eighty-five percent of the lots are zoned for residential purposes.

You have inquired whether, in determining if a residential real estate management association meets the requirements of section 528(c)(3), the Service would consider the golf course to be a single lot. Your question would be an appropriate one in a request for a private letter ruling.

Although this letter is a general information letter, not a private letter ruling, we hope the above information proves helpful.

Sincerely yours,

Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of Assistant Chief Counsel
(Passthroughs and Special Industries)