

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B07 – GENIN-167529-03

Date:

January 08, 2004

In Re: [REDACTED]

Dear : Dear [REDACTED]:

This is in response to your letter, dated October 14, 2003, in which you requested that the [REDACTED] be granted a tax-exempt status. The following information is provided to you pursuant to section 2 of Revenue Procedure 2003-1, 2003-1 I.R.B. 1 (January 6, 2003). This information letter is advisory only and has no binding effect on the Internal Revenue Service (IRS).

You indicate that the Association is a not-for-profit homeowners association which consists of 153 single residence homes. Dues are collected annually in order to maintain the common areas, pay the electric bill for the front entrance and maintain general liability insurance. The Association does not have any salaried employees and board membership is voluntary and without compensation.

Section 528 and § 1.528-1 of the Income Tax Regulations generally provide that homeowners associations meeting the requirements of § 528(c) may elect to be treated as tax-exempt organizations, but only to the extent of their exempt function income.

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(d)(3)(B) provides that the term "exempt function income" means any amount received as membership dues, fees, or assessments from owners of real property in the case of a residential real estate management association.

Section 1.528-8(a) provides that a separate election to be treated as a homeowners association under § 528 must be made for each taxable year. This election is made by filing a properly completed Form 1120-H (or such other form as the Secretary may prescribe). Section 1.528-8(b) provides that for taxable years ending after December 30, 1976, the election must be made not later than the time, including extensions, for filing an income tax return for the year in which the election is to apply.

You have requested that the Association be granted a tax-exempt status. A homeowner's association meeting the definition of section 528(c) is not granted a tax-exempt status. Instead, as explained above, the association must elect to be treated as tax-exempt organization to the extent of their exempt function income by filing a properly completed Form 1120-H.

For your information we are enclosing copies of section 528 of the Code, as well as the section 528 regulations. We are also enclosing Form 1120-H.

This letter should not be regarded as a private letter ruling, nor relied upon as such. If you have any questions, you may contact _____ at _____.

Sincerely,

/s/

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

Enclosures (3)