



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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[REDACTED]

Dear [REDACTED]:

This letter is in response to your letter dated September 30, 2004 in which you requested guidance from the Internal Revenue Service regarding Revenue Ruling 70-604.

Rev. Proc. 2004-1, 2004-1 I.R.B. 1 (available at www.irs.gov), 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 7 of the revenue procedure provides general instructions for requesting letter rulings and determination letters. Section 15 and Appendix A provide the user fee requirements for requests for 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. The Service is also prohibited from issuing a letter ruling regarding a taxpayer's tax return to another taxpayer.

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. 2004-1.

Section 528(a) of the Internal Revenue Code provides that a homeowners association (as defined in § 528(c)) shall be subject to taxation under this subtitle only to the extent provided in this section. A homeowners association shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

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 ifB

(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 fromB

- (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 1.528-8(a) of the Income Tax Regulations provides that an organization wishing to be treated as a homeowners association under § 528 and this section for a taxable year must elect to be so treated. Except as otherwise provided in this section, such election shall be made by the filing of a properly completed Form 1120-H (or such other form as the Secretary may prescribe). A separate election must be made for each taxable year.

Section 1.528-8(f) provides that an election to be treated as an organization described in § 528 is binding on the organization for the taxable year and may not be revoked without the consent of the Commissioner.

Section 1.528-9(a) provides that regardless of the organization's method of accounting, excess assessments during a taxable year which are either rebated to the members or applied to their future assessments are not considered gross income and therefore will not be considered exempt function income for such taxable year. However, if such excess assessments are applied to a future year's assessments, they will be considered gross income and exempt function income for such taxable year.

Revenue Ruling 70-604 provides guidance regarding the application of excess assessments to future assessments. The Revenue Ruling provides that this treatment must be elected at a meeting of the shareholder-owners.

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

Sincerely,

/s/

Joseph H. Makurath
Senior Technician Reviewer, Branch 7
(Passthroughs & Special Industries)
