



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TE/GE EO EXAMINATIONS
1100 COMMERCE STREET, MC 4920 DAL
DALLAS, TX 75242

501.04-00

Release Number: **201313031**

Release Date: 3/29/2013

Date: September 8, 2011

LEGEND

ORG - Organization name

XX - Date Address - address

ORG

ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Number:

Telephone:

Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear :

In a determination letter dated January 14, 19XX, you were held to be exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code (the Code).

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(4) of the Code. Accordingly, your exemption from Federal income tax is revoked effective December 1, 20XX. This is a final adverse determination letter with regard to your status under section 501(c)(4) of the Code.

We previously provided to you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact Taxpayer Advocate, as well as your appeal rights. On February 17, 20XX, you signed Form 6018-A, *Consent to Proposed Action*, agreeing to the revocation of your exempt status under section 501(c)(4) of the Code.

You are required to file Federal income tax returns for the tax periods beginning December 1, 20XX. File returns with the appropriate service center indicated on the instructions for those returns.

You have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer		Tax Identification Number	Year/Period ended November 30, 20xx and November 30, 20xx
LEGEND			
ORG - Organization name	XX - Date	Address - address	City - city
State - state	President - president	Treasurer - treasurer	DIR-1 & DIR-2
= 1 st & 2 nd DIR	CO-1 = 1 st COMPANY		

Issues:

1. Should ORG (ORG) continue to be exempt from tax under Internal Revenue Code (IRC) §501(c)(4) as a social welfare organization?

2. Is the ORG exempt from income tax under IRC §501(a)?

Facts:

The ORG was incorporated in the State of State on April 9, 19XX. The ORG's Articles of Incorporation (AOI), Article IV, states the following purpose for which the corporation was formed:

Section I. The specific purposes for which the corporation is formed are to provide for maintenance, preservation, policing and architectural control for the ORG plat described as: ORG, Volume 90 of Plats, Pages 92 to 106 inclusive, records of City, and to promote the health, safety and welfare of the residents within the above described property and any additional thereto as may hereafter be brought within the jurisdiction of this Association by annexation, as provided in Article VIII herein, and for this purpose.

The ORG states the purpose of their assessments in Declaration of Restrictions, Article V – Maintenance Assessments:

Section 2. Purpose of Assessment. The assessments shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties, and among other uses may include, subject to the Board's discretion, the construction, establishment, improvements, repair and maintenance of the common properties and services and facilities related to the use and enjoyment of the common properties, the payment of taxes and insurance on the common properties, and the installation and maintenance of planting areas on the streets located within the subdivision the policing and fire protection of all properties within "the Plat" and the gate entries to "the Plat", and the reimbursement of Trustee's expenses to the Trustees.

According to IRS records, the organization was granted tax-exempt status as a 501(c)(4) organization in January 19XX. The ORG did not have security gates at the time they applied for, and were granted, tax-exempt status. The officers stated during the interview that the security gates were added to prevent drivers from cutting through the organization's property in order to avoid the congestion on the main streets.

The organization has filed Forms 990 for the years ended November 30, 20XX and November 30, 20XX.

Physical description:

The ORG owns and maintains the portion of the property not owned by ORG (the CO-1) or the residents, which includes the roads and common areas. The entire property is enclosed with fencing. The property contains 426 houses and condominiums, which surround a golf course. The golf course is owned and maintained by the CO-1.

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The road consists of a two-mile loop around the inside of the property. It does not have any sidewalks or bicycle lanes. The examining agent printed and copied a map from Google Maps (www.google.com) into this report.

MAP DELETED

The orange highlighted roads are those owned by the ORG. The letter "A" in the red balloon marks the office for the ORG, which is located inside the ORG's building.

The property has three electronic gates to access to the property:

- (N): a north gate on Address, no guard, requires remote control to enter;
- (S): a south gate on Address; no guard, requires remote control to enter; and
- (M): a west gate or "main gate" on Address, adjacent to a manned guard shack staffed 24 hours a day, 7 days a week.

At the north and south gates, there is a pedestrian or "walk-through" gate. The gate is closed but unlocked during the day and locked at night. Signs on the pedestrian gates state:

"NO TRESPASSING, RESIDENTS ONLY, NO SOLICITING, PRIVATE PROPERTY, PRIVATE ROADS."

A sign on the north (vehicle) gate states:

"GUESTS CHECK IN AT THE Address."

At the main gate, there is an open entrance for pedestrians, adjacent to the exit gate.

There is no parking for vehicles in the common area around the gates or on the nearby streets.

The ORG does not sponsor or host any running clubs, walking clubs, or "fun runs" not otherwise associated with another organization.

The examining agent conducted an on-site interview on March 29, 20XX. The officers present were Treasurer, Treasurer and President, President. The organization's office manager, RA-1, and RA-2, *ex-officio* President, were also present. The agent asked questions regarding the organization and operation of the ORG. After the interview, the agent wrote up the questions and answers and provided them to the treasurer, requesting that the treasurer review, make changes as necessary, and sign the document. The treasurer did not have any changes to the document and signed it. The summary is provided here.

1. Did you receive Publication 1, have you read it, and do you have any questions concerning your rights?

a. They received it and do not have questions at this time.

2. To get a full understanding of your organization, please describe the history of your organization and all of its activities.

- Area was started in 19XX by a group of local people to build a nice housing development with golf course. Started selling memberships. Opened in 19XX. The ORG ran the whole deal

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through 19XX, and then split off into ORG and the ORG. The Board of Directors started in 19XX. Agents were on site to sell homes.

- There are 426 condo and home sites under the ORG. The ORG takes care of the roads (roads are private) including entire asphalt overlay, street signs, storm drains/manholes, fence, and reports street lights out/damaged. There is a fence around the entire property. There are gates at the North, South and West (also called Main) entrances. These are all maintained by the ORG. The ORG also maintains common areas such as the property directly around the gates.
- They contract with a third party for security. They provide guard services at the main gate 24/7. Security patrols from 10pm – 2am on weeknights and 8pm to 4am Friday and Saturday. They check for unusual activity and will check on people's homes who are on vacation. They report to the Security Director, board member, and the ORG will issue a citation if security finds an issue. They do not have other private emergency services; they rely on the City of City for fire and paramedics. If there is a break in, the unarmed security service will contact the local authorities.
- The main gate has one exit gate, an open entrance for pedestrians, and two entrance gates, one for Visitors and one for Residents. The exit and entrance gates are separated by a guard shack. The entrance and exit gates are separated by a raised island; the entrance gates are recessed from the exit gate. The Visitor gate is kept open during the day. A guest wishing to pass through must stop and check in with the guard. The Resident gate is closed but is opened with a remote control by the resident. The guard does not issue day passes to be placed in windows for guests; however, if you are a non-resident ORG member, you will be given a decal to put in your window. This type of member would go through to the Visitor gate and be waved in by the guard.
- They do allow pedestrians to come in (walk/bike/jog) via an unlocked door in the middle of the North and South gates, from 6am to 10pm. This also allows the children residents to enter and exit for school. Children are picked up and dropped off by school buses at the gate entrances. Children from other communities cannot be picked up in these areas because the gate entrances are on main roads which do not have cross walks to other communities or tracts of houses. Children living outside of this development must wait on their side of the road (opposite of the ORG) and wait for the bus to turn around and pick them up. There are no parks or areas of recreation other than the golf course. The ORG was developed prior to the time when sidewalks were required; therefore, the "path" that pedestrians and bicyclists use is the street, shared with the cars. Some corners have reflective markers on the street to provide drivers with heightened awareness that walkers may be present. No current data on how many non-residents come through the gates. Lots of regulars come through the pedestrian gate to walk. If a person desiring to walk, jog or bike on the premises were to drive in, the guard would ask, "Who are you here to see?" If the driver did not have a name, they would likely be turned away. The driver would need to go somewhere, park their car and walk or bike in. Note there is no parking on the streets near the entrances.
- There is a sign for no soliciting, however, they do allow organized solicitors like boys club when they call ahead of time. If they come in unannounced they will be asked for their city of City's solicitor's permit.
- ORG will have events and the ORG will allow people to come in and park on the roads. This occurs about 2 – 3 times per month. Examples are golf tournaments, elementary school fun run, rotary club meetings, local high school athletic department awards banquets, and large city functions. ORG has a large facility for such events which is unique to this local area. ORG will let the front gate know of the events and the people have to say that they are there for the event and are allowed in. Half the people that golf here do not live here.

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• ORG allows civic events to be held at the CO-1 without being charged rent. Examples are City fire marshals, Rotary Club, and local Chambers of Commerce. They do pay for food.

• The BoD consists of 6 elected members and 1 appointed official from ORG. All 7 are voting positions. BoD positions are three year terms. The organization has several committees. The architectural committee enforces the covenants and restrictions. Many of the rules follow the county/city with regards to things such as fireworks and noise ordinance.

• Dues are currently \$ per year, billed once per year. It is the same for empty lots, or built on with a condo or house. ORG is also a member. ORG pays \$ per month and in exchange they get security services – the officer will get out and check doors, etc. ORG provides an office space and meeting room for the annual meeting (2nd Tues of Dec) and other MA meetings. For the year under exam the dues were \$.

• Sales: Members are given 2 remotes but can purchase more for \$ each.

• On the P&L there is a line for "Fees." These include items such as: late payment fees and landscaping services for the out of state owner's empty lot.

3. Is this organization affiliated with any other exempt organization through membership? Are any members of the Board of Directors of your organization members of the board of any other exempt organization?

• Yes, ORG is a member of the ORG. The ORG provides security guard services and use of the roads in exchange for dues fees and office space in their building.

• The ex-officio president who has been active on the board for many years is involved in local city planning. He is on the land use and development commission for the city of City. The ORG has had several projects over the years involving land or road improvements, working with city of City, the Army Corp of Engineers, and the Department of Fish and Gaming. His function is to work with the commission and review staff proposals for presentation to the council. The current project that the city of City and the ORG are working on is to dredge and re-direct the North end of the ORG owned creek so that it does not continue to flood resident's basements. Past projects include building bridges over the North and South portions of the creek (the majority of the creek on the property is owned by ORG) and eliminating the culvert piping so that the salmon can swim through.

Exhibit 1 is an Information Document Request dated April 5, 20XX, provided to the organization in a question and answer format, to provide the examining agent with clarification on some issues. In it, the ORG provided additional information regarding guests entering on a motor vehicles and the neighboring areas' use of the bus stops:

• Guests who drive up and request to walk or jog are asked to abide by the rules of the park.

• The bus stop at the main gate is not used due to lack of need; the other two stops at the north and south gate are used by neighboring homes.

Exhibit 1 confirms the organization's desire to keep through traffic out by installing the gates.

Access to the property

Resident members: The ORG has a policy statement regarding remote controls, which are

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required for entrance to the north, south, and main resident gates. The policy states that only ORG residents may purchase one remote control for gate access per vehicle. The residents do not need to check in with the guard at the main gate, unless they do not have their remote control. All gates are always closed; therefore, the remote controls are used 24 hours a day, 7 days a week.

The ORG requires that the resident fill out a form to request a remote control. The form requires a signature of the resident acknowledging the following statement.

"I understand that driving above the posted speed limit of 25 miles per hour, not obeying stop signs, or allowing access to non-residents by allowing the use of my remote(s) may result in the de-activation of my remote(s)."

ORG member: The CO-1 member has a sticker on their vehicle. The member cannot enter at the north or south gates. They must go through the visitor gate at the main entrance, but will not be stopped. The guard will see the sticker and wave the member through.

Guests of Resident members: Guests of residents must stop at the main gate and tell the guard who they are and who they are there to see. The ORG has a form that the resident must fill out with their guest names and relationship to the resident. The form explicitly states the following:

- If the resident has called in ahead of time and put the guest on an approved list, the guard will allow the guest to enter.
- If the guest is not on the list, the guard will call the resident to verify that the guest is permitted to enter. If the resident does not answer the phone call or an answering machine answers, the "guest(s) will be turned away at the gate."

Guests of a CO-1 event: The CO-1 will call the guard prior to the scheduled event and notify them that guests will be attending. The guests must go to the main gate, pull up to the guard shack and tell them that they are there for the specific event. The guard will then allow them to pass through the visitor gate.

Non-guests: Non-guests include contractors, solicitors, and visitors. Non-guests must go to the main gate and speak with the guard. The guard will ask who they are and who they are there to see. The ORG has a list of contractors approved to enter. Others who are not on a list, who are not there to attend an event, or do not have a contact within the community will be turned away.

The ORG provides the following services:

Security service at the main gate (24/7):

The officer will allow motor vehicles through if the driver (a) is on a list of permitted guests, (2) is allowed by the CO-1, (3) is on a list of contractors (e.g. the landscapers), (4) is attending a CO-1 function that day (e.g., Rotary Club). If the driver is not on a list but knows someone in the community, the officer will call the homeowner. If the homeowner is not home to acknowledge the guest, the guest will be turned away. A driver who is not on a list, not attending an event, and not a guest will be turned away.

Public access:

The public is permitted to come in via the pedestrian doors adjacent to the gates. The north and south entrance doors are locked between 10pm and 6am. Rules pertaining to pets are posted next to the doors. Access next to the main gate is an opening without a door. The north door has signs

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posted on it reading, "NO TRESPASSING, RESIDENTS ONLY, NO SOLICITING PRIVATE PROPERTY, PRIVATE ROADS."		

School bus stop:

The open areas around the gates are used by school buses as bus stops for the children of the ORG community. The north and south gate pick up points are also used by children in neighboring communities.

Services for the CO-1:

The ORG provides security, which patrols the entire property, including the CO-1. They check the CO-1's property and doors of the buildings to ensure they are locked. The CO-1 receives guard services at the gate for their visitors.

Patrolling security service:

Security will patrol the property 10pm – 2am Monday through Friday, and 8pm – 4am Saturday and Sunday. The security officer will check on homes where the homeowners are away on vacation, if requested to do so. Unusual activity is reported to the ORG. The ORG reports the activity during the board meetings and in the newsletter to the homeowners

Common area maintenance:

The gates, roads, perimeter fence, traffic signs, water stream on their property, the common area surrounding the gates, islands in the middle of the road, and the storm drain system are owned and maintained by the ORG.

Architectural Committee:

Per Article VI of the Declaration of Restrictions (DOR), the architectural committee will approve plans submitted by residents which would "alter, construct, or maintain any improvement" of the home. Alterations include exterior paint, landscaping and roofing. The committee also enforces rules which pertain to the permitted or prohibited activities such as pets, clotheslines, errant trash, parking, lack of maintenance, advertising, signs and so on. Article VIII of the DOR includes remedies for violations: reimbursement for the cost of work done by the ORG and/or monetary fines.

Collection of assessments:

The ORG collects assessments from the homeowners and the CO-1 in order to provide security services, guard services, gate and road maintenance, and administration and enforcement of the organization's covenants.

Use of the property:

Declaration of Restrictions Article IV – Property Rights In and Limitations on the Use of the Common Properties Section 1. Members' Easements of Enjoyment.

(a) The right of the Association to limit the number of guests of members. Section 4. Limits.

(c) By granting the right to Members and others to use such common property the Developer and the Association do not intend to dedicate such common property to the public but rather intend to preserve the private character of such common property.

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Section 1. Violation of rules or regulations concerning use of common properties:

(b) In the event that any person, invitee, guest or non-member shall violate any rule or regulation established pursuant to Article IV, Section (a), such person may be barred from further use of the common property.

The ORG provided their Profit and Loss statements for 20XX and 20XX. During the examination, the agent determined that the statements tie closely to the Forms 990 filed for each year. The Profit and Loss statements provide income and expense detail. The examining agent entered the data into a spreadsheet and compared the income and expense to totals, shown as percentages, and copied the spreadsheet into this report as follows:

20XX Percent 20XX Percent

	20XX REVENUES	Percent to Total	20XX REVENUES	Percent to Total
Other Income				
Uncategorized Income				
Membership dues/assessments:				
ORG assessments				
Fees				
Interest on saving/investments:				
Dividends/Interest on securities:				
TOTAL REVENUE				

	20XX EXPENSES	Percent to Total	20XX EXPENSES	Percent to Total
Accounting fees:				
Legal fees:				
Other legal:				
Supplies:				
Postage and shipping:				
Printing and publications:				
Conferences, conventions, etc:				
Professional Services				
Common area utilities				
Security services				
Roads, gates and fences				
Lands and maintenance				
Insurance				
Office expenses				
Computer purchase				
Bank Fees				
NSF Fees				
Architectural Committee				
General membership meetings				
Bad Debts				
Room rental				
Fees and dues				
Contract Labor				
Sales tax				
SUBTOTAL EXPENSES*				

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Loss on disposal of assets Depreciation, depletion, etc: TOTAL EXPENSES NET INCOME/LOSS		

*Note: non-cash expenses have been excluded from the expenses subtotal

In 19XX, this case was considered for revocation for the tax years 19XX and 19XX. The examination casework contains limited amounts of research, information and analysis. The case was reviewed by the IRS appeals function. The examining agent does not have any information as to why the appeals group sustained the organization's exempt status.

The following pictures were taken by the examining agent during the on site examination with the attending officers' permission:

PICTURE DELETED

Main gate entrance. The guard shack in manned 24/7. Left side gate is for visitors, right side is for residents.

PICTURE DELETED

Main gate exit and pedestrian (opening) to the right.

PICTURE DELETED

Interior street view; maintained road, speed bump, perimeter fencing to the right.

PICTURE DELETED

North gate: the pedestrian gate in the middle has signs stating:

NO TRESPASSING, RESIDENTS ONLY, NO SOLICITING, PRIVATE PROPERTY, PRIVATE ROADS.

PICTURE DELETED

Sign on North Gate entrance; guests must enter at the main gate.

PICTURE DELETED

North entrance gate sign states: PRIVATE ENTRANCE, RESIDENT VEHICLES ONLY.

PICTURE DELETED

Towing sign and security camera at the interior north exit gate.

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08 Name of taxpayer A closing conference was conducted on	Tax Identification Number April 5, 20XX.	Year/Period ended November 30, 20xx and November 30, 20xx

Law:

Internal Revenue Code

IRC §501(c)(4)(A)

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

IRC §501(c)(4)(B)

Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

IRC §528

Alternatively, if an organization fails to meet the requirements of 501(c)(4) under Revenue Ruling 74-99, they may be able to take advantage of the provisions under IRC §528 if they meet the qualifications of a homeowners association as defined in that section.

Generally, if the organization meets the appropriate requirements, their membership dues, fees and assessments is considered exempt function income and not subject to tax and only non-member, income is subject to tax. The organization would elect this treatment and file the Form 1120-H, U.S. Corporation Income Tax Return for Homeowners Associations.

IRC §501(a)

Exemption From Taxation. —An organization described in subsection (c) or (d) or §401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under §502 or §503.

IRC §277(a)

General Rule. —In the case of a social club or other membership organization which is operated primarily to furnish services or goods to members and which is not exempt from taxation, deductions for the taxable year attributable to furnishing services, insurance, goods, or other items of value to members shall be allowed only to the extent of income derived during such year from members or transactions with members (including income derived during such year from institutes and trade shows which are primarily for the education of members). If for any taxable year such deductions exceed such income, the excess shall be treated as a deduction attributable to furnishing services, insurance, goods, or other items of value to members paid or incurred in the succeeding taxable year.

IRC §172

172(a) Deduction Allowed. —There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

172(b) Net Operating Loss Carrybacks and Carryovers. —

172(b)(1) Years to which loss may be carried. —

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172(b)(1)(A) General rule. —Except as otherwise provided in this paragraph, a net operating loss for any taxable year —
172(b)(1)(A)(i) shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of such loss, and
172(b)(1)(A)(ii) shall be a net operating loss carryover to each of the 20 taxable years following the taxable year of the loss.

Federal Tax Regulations

§1.501(c)(4) Civic organizations and local associations of employees

Reg. §1.501(c)(4)-1 does not reflect P.L. 99-514, P.L. 100-203, P.L. 100-647, P.L. 10173 or P.L. 104-168.

(a) Civic organizations

(1) In general. —A civic league or organization may be exempt as an organization described in section 501(c)(4) if:

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

(2) Promotion of social welfare

(i) In general. —An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in 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 betterments and social improvements. A "social welfare" organization will qualify for exemption as a charitable organization if it falls within the definition of "charitable" set forth in paragraph (d)(2) of §1.501(c)(3)-1 and is not an "action" organization as set forth in paragraph (c)(3) of §1.501(c)(3)-1.

(ii) Political or social activities. —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. See, however, section 501(c)(6) and §1.501(c)(6)-1, relating to business leagues and similar organizations. A social welfare organization that is not, at any time after October 4, 1976, exempt from taxation as an organization described in section 501(c)(3) may qualify under section 501(c)(4) even though it is an "action" organization described in §1.501(c)(3)-1(c)(3)(ii) or (iv), if it otherwise qualifies under this section. For rules relating to an organization that is, after October 4, 1976, exempt from taxation as an organization described in section 501(c)(3), see section 504 and §1.504-1.

Court Cases

Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (1962) The case involved a nonprofit membership housing cooperative that provided low cost housing to its members. In denying exemption, the court stated that the organization was not organized exclusively for the promotion of social welfare. The court found that although its activities were available to all citizens eligible for membership, "its contribution is neither to the public at large nor of a public character." The court looked to the benefits provided and not to the number of persons who

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received benefits through membership. Compare the decision in *Lake Forest with that in Garden Homes Co. v. Commissioner*, 64 F. 2d 593 (7th Cir. 1933), which held that a housing project formed and controlled by the local government qualified for exemption.

Flat Top Lake Association, Inc. v. U.S.A., 868 F.2d 108, 63 A.F.T.R.2d 89-721, 89-1 USTC P 9180 (1989) Association consisting of owners of property surrounding artificial lake that sought to restrict development to members only brought civil action seeking judicial determination that it currently was and had been exempt from federal taxation as a social welfare organization. The Court of Appeals, K.K. Hall, Circuit Judge, held that: (1) organization that operated for exclusive benefit of members did not serve as "community," as that term related to broader concept of social welfare, for purposes of tax exemption, and (2) association that had done everything within its power to create wholly private environment for its members was not "community," within meaning of federal tax exemption, and could not claim tax exemption for benefiting itself.

Indian Lake Property Owners Association v. Director of Revenue, 813 S.W.2d 305 (1991) The Supreme Court of Missouri, Holstein, J., held that: (1) homeowners' association that enforced subdivision covenants, maintained subdivision roads, and provided security and trash collection services to residences within subdivision was not "civic organization" entitled to sales and use tax exemption, and (2) to qualify as "civic organization," organization's purposes and functions must be concerned with and relate to citizenry at large. Further, the judge discusses Flat Top Lake within the text, stating, "Clearly Congress believed that an organization cannot serve social welfare if it denies its benefits to the general public. Implicitly Congress recognized that a true "community" functions within a broader national fabric. Service to such a community thereby furthers the national interest by expanding potential, by opening opportunities to all citizens who may find themselves within the bounds of that particular community." Exemption denied (affirmed).

Lake Petersburg Association v. C.I.R., 33 T.C.M. (CCH) 259, T.C.M. (P-H) P 74,055, 1974 PH TC Memo 74,055 (1974) The Association was an idea presented by the Petersburg Chamber of Commerce to help stimulate the economy in the surrounding area. A group of businessmen contributed capital and acquired capital from other sources such as the City, the Chamber and two banks, to obtain funding to purchase property and develop it. They formed an association, which required prospective owners to become dues-paying members. The dues helped finance the development of the lake and recreational facilities on said property. Use of the assets was limited to members and their guests. The Association's basis for their argument is that the organization was created to stimulate the economy and make it a better place to live, thereby fulfilling the requirement of a social welfare organization under §501(c)(4). The respondent argued that it was operated primarily for the benefit of its members and therefore did not qualify. The Court found that regardless of the original intent, the actual benefit went to the members and any economic benefits to the Petersburg citizens were "indirect and remote." Exemption was denied.

Rancho Santa Fe Association v. U.S.A., 54 A.F.T.R. 2d 84-5518 (1984). The Association's request for affirmation of their exempt status as a §501(c)(4) organization was granted by the Court. The facts are that the Association consists of 6,100 acres of property, 600 acres of which is owned by the Association and the rest by members who are property owners. Of the 600 acres owned by the Association, 465 acres are dedicated to parkland and open space, playgrounds, athletic fields, a public parking lot, a community clubhouse, and hiking and bridle trails, which are all open to the public. The remaining 135 acres comprise an 18-hole golf course and eight tennis courts which are only available to members. The Association oversees the governance of the property, furnishes private security protection, and functions as a liaison between the community and the Board of

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Supervisors on issues which require the participation of larger governmental entities, such as maintenance of the rights-of-way and the sanitation system. Finally, the Association serves the community in loaning out its facilities free of charge to various public service organizations as well as to the schools. The court decided that "It performs the functions of a governmental entity and brings about civic betterments and social improvements that would be sorely missed by the Rancho Santa Fe community should they be lost or curtailed." Exemption was granted.

Revenue Rulings

Revenue Ruling 69-280, 1969-1 CB 152

The organization was incorporated as a nonprofit membership corporation for the purpose of providing specified services for the homeowners in a housing development. The services consist of maintenance of the exterior walls and roofs of the individual home units. This includes, for example, painting of exterior walls and repair of roofs. The organization here described is performing services that its members would otherwise have to provide for themselves. It is a private cooperative enterprise for the economic benefit or convenience of the members. The court held the operation to be a private self-help enterprise with only an incidental benefit to the community as a whole. Accordingly, this organization is not exempt from Federal income tax as a social welfare organization under section 501(c)(4) of the Code.

Revenue Ruling 72-102, 1972-1 CB 149

The organization is a membership organization that was formed by a developer and is operated to administer and enforce covenants for preserving the architecture and appearance of a housing development, and to own and maintain common green areas, streets, and sidewalks for the use of all development residents. Its activities are for the common benefit of the whole development rather than for individual residents or the developer.

Revenue Ruling 74-99, 1974-1 C.B. 131, modified Rev. Rul. 72-102, to make clear that a homeowners' association of the kind described in Rev. Rul. 72-102 must, in addition to otherwise qualifying for exemption under section 501(c)(4) of the Code, satisfy the following requirements: (1) It must engage in activities that confer benefit on a community comprising a geographical unit which bears a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof; (2) It must not conduct activities directed to the exterior maintenance of private residences; and (3) It owns and maintains only common areas or facilities such as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public and is not restricted to members of the homeowners' association.

Revenue Ruling 80-63, 1980-1 CB 116

To clarify Revenue Ruling 74-99, specific questions that have been raised and their answers are as follows:

Question 1.

Does Rev. Rul. 74-99 contemplate that the term "community" for purposes of section 501(c)(4) of the Code embraces a minimum area or a certain number of homeowners?

Answer:

No. Rev. Rul. 74-99 states that it was not possible to formulate a precise definition of the term "community". The ruling merely indicates what the term is generally understood to mean. Whether a particular homeowners' association meets the requirements of conferring benefit on a

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community must be determined according to the facts and circumstances of the individual case. Thus, although the area represented by an association may not be a community within the meaning of that term as contemplated by Rev. Rul. 74-99, if the association's activities benefit a community, it may still qualify for exemption. For instance, if the association owns and maintains common areas and facilities for the use and enjoyment of the general public as distinguished from areas and facilities whose use and enjoyment is controlled and restricted to members of the association then it may satisfy the requirement of serving a community.

Question 2.

May a homeowners' association, which represents an area that is not a community, qualify for exemption under section 501(c)(4) of the Code if it restricts the use of its recreational facilities, such as swimming pools, tennis courts, and picnic areas, to members of the association?

Answer:

No. Rev. Rul. 74-99 points out that the use and enjoyment of the common areas owned and maintained by a homeowners' association must be extended to members of the general public, as distinguished from controlled use or access restricted to the members of the association. For purposes of Rev. Rul. 74-99, recreational facilities are included in the definition of "common areas".

Question 3.

Can a homeowners' association establish a separate organization to own and maintain recreational facilities and restrict their use to members of the association?

Answer:

Yes. An affiliated recreational organization that is operated totally separate from the homeowners' association may be exempt. See Rev. Rul. 69-281, 19691 C.B. 155, which holds that a social club providing exclusive and automatic membership to homeowners in a housing development, with no part of its earnings inuring to the benefit of any member, may qualify for exemption under section 501(c)(7) of the Code.

Question 4.

Can an exempt homeowners' association own and maintain parking facilities only for its members if it represents an area that is not a community?

Answer:

No. By providing these facilities only for the use of its members the association is operating for the private benefit of its members, and not for the promotion of social welfare within the meaning of section 501(c)(4) of the Code.

Revenue Ruling 77-273, 1977-2 CB 194, (Jan. 01, 1977) - Security services. An organization provided security services for residents and property owners of a particular community. Security services provided include emergency rescue service, guard service for homes, apartments, businesses, and construction projects, and motorcycle escorts for funeral processions. These services are regularly provided by the organization's members who are paid in accordance with an established wage scale. A nonprofit organization that provides security services for residents and property owners of a particular community, who agree to voluntarily donate money at a specified hourly rate to defray the cost of the services, is carrying on a business with the general public in a manner similar to organizations operated for profit and does not qualify for exemption under section 501(c)(4) of the Code.

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Should ORG continue to be exempt from tax under Internal Revenue Code (IRC) §501(c)(4) as a social welfare organization?

The government contends that the ORG does not operate as a 501(c)(4) organization for the following reasons:.

1. The organization does not promote social welfare. Although the organization claims to be open to the general public, the records show that they place significant barriers with the goal of restricting the general public from accessing the grounds. (IRC §501(c)(4), Revenue Ruling 74-99, Revenue Ruling 80-63)

2. The general public does not significantly benefit from this organization. (Commissioner v. Lake Forest, supra, Flat Top Lake Association, supra, Indian Lake Property Owners Association, supra, Lake Petersburg Association v. C.I.R., supra; Rancho Santa Fe Association v. U.S.A., supra).

The organization operates to restrict the general public from access to its facilities, thereby failing to confer a benefit onto the community. Where there is failure to serve the community, there is a failure to promote social welfare, which is a requirement for a 501(c)(4) organization.

A 501(c)(4) organization must operate "exclusively for the promotion of social welfare" which is further explained by the Regulations thus: being primarily engaged in promoting in some way the common good and general welfare of the people of the community. Revenue Ruling 74-99 confirms that the benefit must be conferred to "the community". Revenue Ruling 80-63 clarifies Revenue Ruling 74-99 stating that while a "community" cannot be strictly defined, that if the association owns and maintains common areas and facilities for the use and enjoyment of the general public as distinguished from areas and facilities whose use and enjoyment is controlled and restricted to members of the association then it may satisfy the requirement of serving a community.

The addition of the security gates are a significant change to the organization's operations because they serve to exclude the general public from entering the property. Excluding the public does not conform to the definition of a §501(c)(4) organization. The organization is not operating according to the exempt purpose for which they received exempt status.

The organization spends an extraordinary amount of time and resources on security, which supports the examining agent's position that the ORG is trying and, very successfully, keeping people out. The security costs incurred in 20XX were \$ or % of their expenses, and \$ or % in 20XX. They provide and maintain security systems, guards, and gates. According to the December 20XX newsletter, about \$ was spent on an upgrade to the security system, specifically the guard's computer, card readers and remote controls. This upgrade includes an alarm to the guard shack when a non-resident enters through the gates on a resident's tail. This is a huge expense to gather such information. They are very serious about keeping people out.

The examining agent accessed the 20XX – 20XX newsletters and board meeting minute notes from the organization's website. They reveal that, on average, % of the material discusses security issues. Notably, there is no discussion about outreach to the community. Most of the discussions center on incidents, such as break-ins, speeding reminders, and gate or security vehicle repairs. There are also specifically cited instances where the public was turned away or escorted off the premises. In April 20XX, two young women were at the clubhouse (CO-1 property), offering information about their spa to this exclusive community. They were told to leave. In May 20XX, representatives for a glass company were attempting to make sales at the homes and were "escorted through the south gate." In February 20XX, some young people were trying to make their

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commissions in this upscale neighborhood by offering discounted or "bundled" cable television services to each home, successfully making some sales. However, it was quickly reported and the representatives were told to leave. The organization is quick to respond to the presence of the public inside their gates and is determined to keep them out.

Security consumes a significant amount of time for discussion, write-ups in the newsletter, and financial resources. They devote much time to keeping people out, which is contradictory to what a §501(c)(4) organization should do: provide social welfare to the general public. They are not in accordance with their tax-exempt purpose.

The ORG makes it clear in writing that their property will not be available to the public. Article IV of the Declaration of Restrictions (v. 02/01/19XX) states that the association does "not intend to dedicate such common property to the public but rather intend to preserve the private character of such common property." The written intent is for the organization to directly benefit the members and not the general public. This does not have the character of a social welfare organization, which should provide the use, and enjoyment of its facilities to the general public.

During the tour of the grounds, the Treasurer and *ex-officio* President stated that the residents enjoy the privacy of their community, afforded by the gate and security service (also stated in Exhibit 1). They stated that the gates were erected with the purpose of keeping traffic from "cutting through" the property when the surrounding public main streets were heavily congested. The ORG has acted in a way to prevent the public from entering, which is not in accordance with a 501(c)(4) organization.

The ORG also maintains the right to "limit the number of guests of members" as stated in Article VI of the Declaration of Restrictions. If needed, the association maintains the right to bar guests from the property, as stated in Section 1(a) of Article VII. This is another example of the manner in which the ORG enjoys the right to restrict and enforce limited access to the general public.

The ORG does not hold its property out to being public-friendly. There are no other facilities other than the road available for the public to use such as sidewalks, trails, parks or swimming pools. The pedestrian gates are the bare minimum of public access offered by the organization. Even then, the signs on the north and south gates further exclude the public by demanding that there should be "NO TRESPASSING," and a surveillance camera looms on top of the gate. The open pedestrian gate at the main entrance is scrutinized by a live security guard. The entrances are intimidating. The doors are locked at night. The public is not welcome. The evidence is clear that the ORG intends to keep people out. The ORG does not operate for the good of the public. This is not in accordance with a 501(c)(4) organization.

The intention of the gates is to keep the public out for security reasons and from utilizing their privately maintained roads. The intention is made clear by (1) remote control access gates, (2) a 24-hour guard at the visitor gate, (3) a practice of turning away visitors not pre-approved to enter, and (4) unfriendly signs posted on the gates stating, "NO TRESPASSING, RESIDENTS ONLY." By restricting access from the general public, the ORG is not promoting the social welfare standards set forth in the Code, Regulations and Revenue Rulings, and therefore does not operate according to the exempt purpose of a 501(c)(4) organization.

The ORG does not operate in a way that significantly benefits the surrounding community, as required by Code §501(c)(4) and explained in Revenue Ruling 80-63. This was also an issue in the Commissioner v. Lake Forest, *supra*, case where the court ruled against exemption for the

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organization. The amount of benefit, not the number of people receiving the benefits, was at issue. The public benefit was insignificant and warranted a loss in exempt status. Similarly, the ORG's benefits to the general public are insignificant. They provide a roadway to walk on. The roadway does not have a sidewalk or trail nearby. The organization does not provide parks, recreation equipment, or the like. The two mile loop of roadway and common area around the gate for the school buses are not significant contributions to the general public.

Court documents for Indian Lake Property Owners Association, *supra*, state that a §501(c)(4) organization "cannot serve social welfare if it denies its benefits to the general public." Clearly, the ORG is denying benefits to the public by putting up the fences, gates, and signs stating, "NO TRESPASSING, PRIVATE PROPERTY, PRIVATE ROADS," etc. Similar to the Indian Lake case, they are not serving the public. The organization no longer qualifies for tax exemption under §501(c)(4).

The amount of road usage by the public is incidental when compared to the members or the members' *bona fide* guests. In fact, the latter includes guests of the CO-1, which is a member of the organization, and is permitted to have guests enter the property as long as they notify the security guard at the gate or issue decals to the individuals. The public, then, is a very small number of people which are not homeowners, guests of homeowners, the CO-1, or guests of the CO-1. The organization admitted during the interview that they do not keep a count of the number of visitors entering through the vehicle gate or the pedestrian gate. They stated during the interview that they have "lots of regulars" but this does not provide any factual information regarding quantity or differentiation between homeowners or the general public. They have no idea who and how many are coming through. They cannot justify that they operate for the good of the public when they do not know how much of the public is entering their property. Their argument is not substantiated. The examining agent further contends that the number of pedestrians must be minimal because there is *no parking within a reasonable distance of the gates*. The usage of the property by the small amount of public able and permitted to enter is minimal and incidental. This is not in accordance with a §501(c)(4) organization.

The benefits to the general public are insignificant and incidental when compared to the benefits to the resident homeowners/members. Occasional and restricted road usage by visitors is incidental to the daily security patrol, guards, and privacy provided to the 426 residents. The members are the ones benefitting from the maintained road and security services. The small amount of the public who enter only benefit in a trivial amount when compared to the members. In addition, some ORG benefits are of no benefit to the public at all: monitoring of exterior changes to homes, garage doors left open, trash in yards, leaves in the gutters, and cars parked on streets. The law says that the organization must provide social welfare for the good of the public. The public is not being served. The residents are primarily served by the organization. This does not satisfy the requirements of a 501(c)(4) organization.

The officers originally stated during the interview that the area surrounding the north and south gates is used by school buses to pick up residents' children. Children from neighboring communities were not permitted to cross the street to gain access to the organization's bus stops. They later recanted, as seen in Exhibit 1, that the school buses also pick up some children from neighboring communities at one of the bus stops. Providing a bus stop for a few children at one gate is a small benefit to the community at large. Should the ORG discontinue allowing the bus to pick up children at the gates, the district would make alternate arrangements for them. The benefit is diminished when a satisfactory alternative exists. The ORG's property around the gates does not provide a significant benefit to the community.

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The ORG's lack of public benefit is closely aligned with those as seen in Flat Top Lake v U.S.A., *supra*, and Lake Petersburg Association v. C.I.R., *supra*. Similar to Lake Petersburg, the ORG limits the facilities to members and their guests. The ORG's road is available on a restricted basis to the occasional pedestrian, which is indirect and remote when compared to the members' benefits. In addition, as stated in Flat Top, the ORG "operates for the exclusive benefit of its members and does not serve a 'community' as that term relates to the broader concept of social welfare." The courts denied exemption to these aforementioned organizations. Following similar fact patterns, the ORG should also be denied their tax-exempt status.

In contrast, the association in the court case Rancho Santa Fe Association v. U.S.A., *supra*, was found to operate according to the exempt purpose of a 501(c)(4) organization. Rancho Santa Fe provided vast amounts of parkland, open space, facilities and equipment to the public. In contrast, the ORG only provides the usage of its two-mile road and on a restricted basis. It does not reach out to the public and loan out its property. Public events such as Rotary Club meetings are hosted and funded by the separate organization, ORG, an organization which is not part of this examination. The role of the ORG with the CO-1 is limited to allowing participants in and allowing them to park. The ORG does not provide a significant benefit to the public, which is in contrast to Rancho Santa Fe, who was permitted to retain their exempt status. The ORG should not be allowed to continue as a §501(c)(4) organization.

Taxpayer's Position Issue #1:

The taxpayer is being presented with this report at this time. The examining agent is awaiting their response as to this position.

Government's Position Issue #2:

Is the ORG exempt from income tax under IRC §501(a)?

The ORG is no longer qualified for exemption from federal income tax under Code §501(c)(4). Therefore, the ORG is no longer qualified for exemption from federal income tax under Code §501(a).

The government contends in its position that the organization's exemption from federal income tax should be revoked back to the tax period beginning the first day of the organization's fiscal year, December 1, 20XX.

Taxpayer's Position Issue #2:

The taxpayer is being presented with this report at this time. The examining agent is awaiting their response as to this

Conclusion:

The organization restricts the public from accessing its property, which does not further the exempt purpose of a §501(c)(4) organization. The property is fenced and gated with 24-hour security at the main gate. Only members or guests of the CO-1, a separate organization not subject to this examination, are permitted to enter. Pedestrian gates allow limited entrance during daylight hours. Pedestrians do not appear to be welcome; signs on the doors read, "NO TRESPASSING, RESIDENTS ONLY, PRIVATE PROPERTY, PRIVATE ROADS." The organization spends a significant amount of time and resources discussing and implementing security measures to keep the public out.

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The ORG does not provide a significant benefit to the general public, similar to the case Lake Petersburg Association v. C.I.R., *supra*. The ORG functions to maintain the property for the privacy and safety of the members and not for the benefit of the public. This is not the exempt purpose of a §501(c)(4) organization, and should not be permitted to continue as such.

The ORG is no longer qualified for exemption from federal income tax under Code §501(c)(4). Therefore, the ORG is no longer qualified for exemption from federal income tax under Code §501(a). The organization's exempt status should be revoked back to the tax period beginning the first day of the organization's fiscal year, December 1, 20XX.