



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

501.04-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

March 26, 2013

Number: **201338055**
Release Date: 9/20/2013

LEGEND

ORG - Organization name
XX - Date Address - address

Taxpayer Identification Number:
Form:
Tax Year(s) Ended:
Person to Contact/ID Number:
Contact Number:
Group Manager Contact Number:

ORG
ADDRESS

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear :

In a determination letter dated April 7, 20XX, 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 January 1, 20XX. This is a final letter with regard to your exempt status.

We previously provided 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 the Taxpayer Advocate, as well as your appeal rights. On February 8, 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 for tax period(s) shown above. If you have not yet filed these returns, please file them with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in 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 call the contact person at the telephone number shown in the heading of this letter.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosure:
Publication 892



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division
24000 Avila Road, MS 3000
Laguna Niguel, CA 92677-3405

ORG
ADDRESS

Date:
January 28, 2013
Taxpayer identification number:

Form:

Tax year(s) ended:

Person to contact / ID number:

Contact numbers:

Manager's name / ID number:

Manager's contact number:

Response due date:

Certified Mail - Return Receipt Requested

Dear _____ :

Why you are receiving this letter

Enclosed is a copy of our report of examination explaining why revocation of your organization's tax-exempt status is necessary.

What you need to do if you agree

If you agree with our findings, please sign the enclosed Form 6018-A, *Consent to Proposed Action*, and return it to the contact at the address listed above. We'll send you a final letter revoking your exempt status.

If we don't hear from you

If we don't hear from you within 30 calendar days from the date of this letter, we'll process your case based on the recommendations shown in the report of examination and this letter will become final.

Effects of revocation

In the event of revocation, you'll be required to file federal income tax returns for the tax year(s) shown above. File these returns with the contact at the address listed above within 30 calendar days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

What you need to do if you disagree with our findings

If you disagree with our position, you may request a meeting or telephone conference with the supervisor of the contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information, including a statement of the facts, the applicable law and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

If you and Appeals don't agree on some or all of the issues after your Appeals conference, or if you don't request an Appeals conference, you may file suit in United States Tax Court, the United States Court of Federal Claims, or United States District Court after satisfying procedural and jurisdictional requirements.

You may also request that we refer this matter for technical advice as explained in Publication 892. Please contact the person identified in the heading of this letter if you're considering requesting technical advice. If we send a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, then no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate Service (TAS). **TAS is your voice at the IRS. This service helps taxpayers whose problems with the IRS are causing financial difficulties; who have tried but haven't been able to resolve their problems with the IRS; and those who believe an IRS system or procedure is not working as it should. If you believe you are eligible for TAS assistance, you can call the toll-free number 1-877-777-4778 or TTY/TDD 1-800-829-4059. For more information, go to www.irs.gov/advocate.** If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

If you have any questions, please call the contact at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Director, EO Examinations

Enclosures:
Report of Examination
Form 6018-A
Publication 892
Publication 3498

Form 886-A (Rev. January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit
Name of Organization/Taxpayer	Tax Identification Number	Year/Period ended
ORG	EIN	12/31/20XX to 12/31/20XX

LEGEND

ORG - Organization name EIn - ein XX - Date Address - address
City - city State - state County - county

Issue:

1. Whether ORG ("ORG") qualifies for exemption under the Internal Revenue Code ("Code") Section 501(c)(4).
2. If ORG does not qualify for exemption under the Code Section 501(c)(4), should its exemption be revoked.
3. Whether ORG qualifies for election under the Code Section 528.

Facts:

ORG was incorporated in the state of State on May 25, 20XX. ORG stated its specific purposes on its Articles of Incorporation as:

"To provide assistance in the up-keep and management of an office-condominium building commonly know as ORG."

The Bylaws, dated January 12, 20XX, stated the specific purpose of ORG as:

"To provide for the management, administration, maintenance, architectural control and preservation of the condominiums and common areas on that certain real property situated in the City, County, State, more particularly described in Exhibit A attached hereto (the "Covered Property") as the same shall be automatically amended without any other action to conform with Exhibit A attached to that certain Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements to be recorded in the Official Records, County State, as the same may be amended from time to time."

The Exhibit A attached to the Bylaws stated the following:

"Real property located in the City, County, State of State and more particularly described as Parcel 1 of Parcel map 20XX-240 as filed in the City and office of the County Recorder of County in Book 350, Pages 10-12, Parcel 1 of the parcel Map have been further divided into eleven Units 100 through 230, by the Condominium Plan covering the property Recorded in the office of the County Recorder of County on September 25, 20XX as Instrument 20XX000636928."

ORG filed a Form 1024, *Application for Recognition of Exemption* Under the Code Section 501(c)(4), with the Internal Revenue Service ("IRS") on March 9, 20XX. ORG described its activity as:

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"ORG was formed for the express purpose of managing the affairs and expenses of an office condominium building on behalf of the owners of its twelve (12) air space office condominium units.

Each air space condominium owner pays to ORG each month a pro rated amount of the anticipated expenses incurred in maintaining the building as a whole (e.g. janitorial services, water & sewer costs to common rest rooms and corridor painting, etc.

The IRS granted the tax exempt status to ORG under the Code Section 501(c)(4) on April 7, 20XX.

The assigned Internal Revenue Agent ("Agent") initiated the examination of ORG's Form 990, *Return of Organization Exempt From Income Tax* on December 20, 20XX, for the activities conducted during the year ended December 31, 20XX.

ORG stated its mission or most significant activities on its Form 990, Part I as:

"ORG was formed for the express purpose of managing the affairs and expenses of an office condominium building on behalf of the owners."

Operations

The primary purpose of ORG is to act as an owners association. Members are required to join if they own property within ORG. ORG is empowered to enforce architectural covenants on the owners.

ORG's property includes an office condominium building, a parking lot, and two blocks of greens located at the corner of Address and Address. The south and west sides of the building were bounded by greens and the north and east sides were bounded by the parking lots.

The building has two floors with thirteen business offices inside; eight on the first floor and five on the second floor, which represent real state company, doctor's office, management company, financial company, etc. This office building has no residential units. The office building has two doors in the north and east entrances. There is a sign "NO SOLICITING" attached on the door on the east entrance. The doors have automatic lock systems; the systems unlock the doors during the office hours from 7 a.m. to 6 p.m. from Monday to Friday and from 8 a.m. to 1 p.m. on Saturday. During the office hours, everybody can go into the building without using a key card. After the business hours, the doors are automatically locked and only the owners and employees can get access to the building with their key cards. The parking lots are open to the general public with no gates. The employees of the business offices and the doctors' patients use the parking lot every day. In the middle of the parking lot, there's a trash dumpster with a sign "NO PUBLIC DUMPING. TRASH DUMPSTERS FOR Address ONLY. THIS TRASH ENCLOSURE IS MONITORED BY VIDEO SURVEILLANCE." on it.

Financial

Form 886-A (Rev. January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit
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In 20XX and 20XX, ORG generates its sole source of income from the membership dues. The dues are calculated by allocating each office's square footage to the whole building's total square footage times the total budgeted expenses incur to manage the whole building in the next year.

All the expenses incurred in 20XX and 20XX are related to the acquisition, construction, management, maintenance, and care of ORG's properties.

LAW

Issue #1&2: Law regarding the Code Section 501(c)(4):

The Code Section 501(c)(4) provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Treasury Regulations Section 1.501(c)(4)-1(i) provides, in part, that 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.

Revenue Ruling 69-280, 1969-1 C.B. 152, holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt from Federal income tax under the Code Section 501(c)(4).

Revenue Ruling 74-17, 1974-1 CB 110, (Jan. 01, 1974) describes an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners that does not qualify for exemption under the Code Section 501(c)(4). By virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property in the condominium. In addition, condominium ownership necessarily involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners.

Revenue Ruling 74-99 provides that in order to qualify for exemption under the Code Section 501(c)(4), a homeowners association (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

Flat Top Lake Ass'n, Inc v. US holds that an organization will not qualify for tax exempt status under the Code Section 501(c)(4) if it restricts its facility and activities only to members. It cites Revenue Ruling 74-99 which states that a homeowner's association must serve a "community" which bears a

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reasonably, recognizable relationship to an area ordinarily identified as a governmental subdivision or unit. Second it must not conduct activities directed to the exterior maintenance of any private residence, Third common areas or facilities that the homeowners' association owns and maintains must be for the use and enjoyment of the general public.

Issue#3: Law regarding the Code Section 528.

The Code Section 528(a) provides, in part, that a homeowners association shall be considered an organization exempt from income taxes for the purposes of any law which refers to organization exempt from income taxes.

The Code Section 528(b) imposes for each taxable year a tax equal to 30 percent of the homeowner association taxable income.

The Code Section 528(c)(1) provides, in part, that a homeowner's association means an organization which is a residential real estate management 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 owners of residence or residential lots in the case of a residential real estate management 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
- (D) No part of the net earnings of such organization inures to the benefit of any private shareholder or individual.
- (E) Such organization elects to have this section apply for the taxable year.

The Code Section 528(c)(3) provides that the term "residential real estate management association" means any organization meeting the requirements of subparagraph (A) of paragraph (1) with respect to a subdivision, development, or area substantially all the lots of buildings of which may only be used by individuals for residences.

The Code Section 528(c)(5) provides that the term "association property" means property held by the organization, property commonly held by the members of the organization, property within the organization privately held by the members of the organization, and property owned by a governmental unit and used for the benefits of the residents of such unit.

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The Code Section 528(d) provides that homeowner association taxable income of any organization for any taxable year is equal to the excess of gross income for the taxable year (excluding exempt function income) over the deductions allowed by this chapter which are directly connected with the production of gross income, computed with the modifications provided in paragraph (2).

The Code Section 528(d)(3) defines exempt function income as any amount received as membership dues, fees, or assessments from owners of real property in the case of a residential real estate management association.

Treasury Regulations Section 1.528-8(e) provides that if an organization is notified after the close of a taxable year that its exemption for such taxable year under Section 501(a) is being revoked retroactively, it may make a timely election under Section 528 for such taxable year. Notwithstanding any other provisions of this section, such an election will be considered timely if it is made within 6 months after the date of revocation.

Government's Position

Issue#1

As described in Revenue Ruling 74-99, to qualify as a homeowners association under the Code Section 501(c)(4), the organization must own and maintain the common areas or facilities which are for the use and enjoyment of the general public. However, ORG does not own and maintain such common area or facilities. Although there are no gates in the parking lot, it's for the use of the employees of the business offices and the patients who visit the doctor offices. This parking lot serves the private benefit of the members instead of the community and it is not considered a common area for the use and enjoyment of the general public.

In addition, as ORG states its mission on the Form 990, this association is an office building formed to provide for the management, maintenance, and care of common areas with membership assessments paid by the unit owners. The amount of membership dues each year depends on the costs incurred to maintain the whole building in the next year; that is, members pay to maintain their offices. This constitutes the provision of substantial private benefits for the unit owners. ORG is operated exclusively for the benefit of the condominium owners and fails the requirements set force in Revenue Ruling 74-17. Therefore, ORG does not qualify for exemption under the Code Section 501(c)(4).

Furthermore, as described in Revenue Ruling 74-99, a homeowners association should manage the private residences instead of the office units. Therefore, ORG is not qualify for exemption under the Code Section 501(c)(4).

Taxpayer's Position-Issue#1

ORG agrees with the IRS position.

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Government's Position-Issue#2

As stated above, ORG is operating for the private benefit of the business owners by collecting their dues to maintain the office building as a whole. This is not for the promotion of social welfare within the meaning of the Code section of 501(c)(4). In addition, it does not serve any private residence and it does not operate as a homeowners association. Therefore, ORG's exemption should be revoked.

Taxpayer's Position-Issue#2

ORG agrees with the IRS position.

Government's Position-Issue#3

According to the Code Sections 528(c)(1) & (3), in order to be considered as a homeowners association, an organization must have substantially all of the units of the property be used by individuals for residences. An association meets the "substantially all" requirement if at least 85% of the aggregate square footage of all units is used as residences.

As the fact section described above, ORG has no residence unit. Therefore, ORG fails the requirements under the Code Sections 528(c)(1) & (3). Accordingly, the Code Section 528 is not applied to ORG.

Taxpayer's Position-Issue#3

ORG agrees with the IRS position.

Conclusion:

ORG's exempt status is revoked effective January 1, 20XX.

ORG is liable for filing its Forms 1120 for the tax periods ending December 31, 20XX, and all the subsequent years.