

APR 30 1980

Gentlemen:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code and the information contained therein.

The evidence presented discloses that you were incorporated in the State of [REDACTED] on [REDACTED] to organize and operate a real estate management association devoted exclusively to provide for the acquisition, construction, management, maintenance, care and preservation of the common areas and facilities within a certain tract of land; to promote the recreation, health, safety and welfare of the residents within said tract of land and any annexation thereto; no part of the net earnings of the association is to inure to the benefit of, or be distributable to, any director, officer or member of the association, or any other person and no pecuniary gain or profit to members thereof is contemplated or permissible.

Membership in your organization includes the declarant and every record owner of a lot in the [REDACTED].

Income is derived from annual assessments or charges levied against each record owner of a lot. Expenses are for organizational and legal fees, and will be for improvements, operation, care and maintenance of all common areas and carports owned by individual residents.

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

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides 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.

CODE	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
	624	[REDACTED]	[REDACTED]	[REDACTED]			
SUR-NAME	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
DATE	1/15/80	4/15/80	7/29/80	4/29/80			

Revenue Ruling 74-99, 1974-1 C.B. 131, states guidelines under which a homeowners association could qualify for exemption under section 501(c)(4) of the Code. These guidelines are:

1. The organization must serve a "community" which bears a reasonable, recognizable relationship to an area identified as governmental;
2. It must not conduct activities directed to the exterior maintenance of private residences; and
3. The common areas or facilities must be for the use and enjoyment of the public.

The organization, described in Revenue Ruling 74-99 was formed by a commercial real estate developer as an integral part of a plan for the development of a subdivision. Membership was required of all those who owned lots and was limited to lot owners. The organization was supported by periodic assessments against the members with unpaid assessments constituting a lien on property. The format of this agreement was spelled out in written documents tied to enforceable contracts for the sale and purchase of private property.

It was stated in Revenue Ruling 74-99 that this arrangement created prima facie presumption that the organization is operated essentially for private benefit.

The Declaration of Covenants, Conditions and Restrictions dated [REDACTED] is binding on all parties having any right, title or interest in the land and buildings comprising [REDACTED] and members are subject to all easements, restrictions, covenants and conditions contained therein.

Article [REDACTED] - Section [REDACTED] of the Declaration of Covenants, Conditions and Restrictions covers the right of the Association to maintain all non-public ways, parking areas, including the floor of carport areas, and such portions of public streets, ways and roads as are not publicly maintained for any reason.

[REDACTED]

Article [REDACTED] of the Declaration covers the right of the Association, or any owner, to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration.

Revenue Ruling 74-99 reinforces denial of exemption to an organization that provides exterior maintenance to an owner's property as cited in prior Revenue Ruling 69-280, 1969-1, C.B. 152. Thus Association maintenance of individually owned carports is providing a service to the members.

It is held that the Association has the presumed right through its Declaration of Covenants, Conditions and Restrictions to provide exterior maintenance and preserve the appearance of an owner's property and therefore would provide a benefit to its individual members.

Accordingly, you are not primarily engaged in promoting the common good and general welfare of the community. Therefore, we conclude that you are not qualified for recognition of exemption under section 501(c)(4) of the Code and you are required to file Federal income tax returns on Form 1120 or you may elect to file under section 528 to receive certain tax benefits by filing Form 1120-H.

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office or, if you request, at any mutually convenient District office. If we do not hear from you within 30 days of the date of this letter, this determination will become final.

Sincerely yours,

[REDACTED]
District Director

Enclosure

[REDACTED]