

LTR-RUL, UIL No. **0501.04-01 Exception from tax on corporations, certain trusts, etc. (Exempt v. not exempt); Civic leagues and social welfare groups (See also 0501.03-25); Local associations of employees. IRS Letter Ruling 200910067 (Nov. 07, 2008)**
LTR 200910067, November 7, 2008

Symbol: Not Given

Uniform Issue List No. 0501.04-01

[[Code Sec. 501](#)]

Exception from tax on corporations, certain trusts, etc. (Exempt v. not exempt); Civic leagues and social welfare groups (See also 0501.03-25); Local associations of employees.

In a determination letter dated April 19XXX, 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 July 1st, 20XX. This is a final adverse determination letter with regard to your status under section 501(c)(4) of the Code.

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 September 4, 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 have filed taxable returns on Form[s] 1120, *U.S. Corporation Income Tax Return*, for the year[s] ended June 30, 20XX, 20XX, and 20XX with us. For future periods, you are required to file Form 1120 with the appropriate service center indicated in the instructions for the return.

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, 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, Vicki L. Hansen, Acting Director, Exempt Organizations Examinations.

We have enclosed a copy of our report of examination explaining why we believe an adjustment of your organization's exempt status is necessary.

If you do not agree with our position you may appeal your case. The enclosed Publication 3498, *The Examination Process*, explains how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you. For your convenience, an envelope is enclosed.

If you and Appeals do not agree on some or all of the issues after your Appeals conference, or if you do not 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 as described in Publication 3498.

You may also request that we refer this matter for technical advice as explained in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*. If a determination letter is issued to you based on technical advice, no further administrative appeal is available to you within the IRS on the issue that was the subject of the technical advice.

If you accept our findings, please sign and return the enclosed Form 6018, *Consent to Proposed Adverse Action*. We will then send you a final letter modifying or revoking exempt status. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and this Letter will become final. In that event, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns 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. 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, *****, Revenue Agent.

Form 886A
(Rev.4-68)

Department of the Treasury -
Internal Revenue Service
Explanation of Items

Schedule No. or
Exhibit

Name of Taxpayer
ORG

Year/Period
Ended
20XX06

ORG = Organization name
XX = Date
City = city
XYZ = State

FACTS:

ORG was formed in 19XX. ORG encompasses a small area of approximately 550 acres within the city of City, XYZ. ORG represents approximately ***** households. Its purpose is to take ownership of private roadways and common areas in a residential development and to provide for their repair and maintenance. In addition, ORG was to provide police protection and generally safeguard the health, comfort and safety of residents. ORG was granted exempt status in April of 19XX.

ORG is a membership organization. Local property owners are referred to as members, their membership is a consequence of property ownership within the City area. Only property owners are allowed to join, and membership is automatic under provisions of the organization's By-Laws and Corporate Charter. Initially organization assessed its members for the funds with which to carry out its activities, but had no legal authority to enforce its assessments.

Dues are not obligatory, unless there is a provision for them in the deed of the property owner, and are used chiefly to defray the costs of printing an annual directory and for some smaller social events. The organization also conducts various holiday programs and recreational activities for resident members, some of which involve additional charges.

The organization's primary activity was in the area of public safety and crime prevention. As a major part of its efforts in this area, the organization contracted with retired police officers to provide the community with professionally trained security personnel. They patrol the area and respond to calls for routine police matters. Access by non-residents is explicitly restricted, and notice is given that any unauthorized vehicles will be stopped. If security personnel detect the presence of non-residents in the area, non residents are asked to leave.

The organization's activities in the City area include removal of deteriorated structures and flora, and improvement and maintenance of residential area roads, signage, drains, and open spaces. Signs are posted at various entry points to the area indicating it is private property.

In 19XX, the state of XYZ adopted a statute to allow for the establishment of districts within municipalities. The City Tax District was formed by area residents. Since association dues or assessments were not enforceable taxes were needed for purpose the purpose of providing security services and maintaining Association's common areas, and to enforce liens against property owners who failed to pay the assessments. The creation of a Tax District ensured that all property owners paid their fair share of the expenses of the area.

ORG leased its roads and common areas to the Tax District to limit ORG's liability. The Tax District and Association entered into a Service Contract. The Service Contract makes ORG responsible for the duties it always discharged. ORG sub-contracts its responsibilities to other entities for security and maintenance. Provisions of the annual contract are essentially unchanged since 19XX.

ORG is reimbursed for the services it provides at cost from the Tax District. ORG does receive tax return preparation, bookkeeping, and legal services through the Tax District's budget, but this is not disclosed on the 990.

The organization's activities benefit local property owners. Substantially all of its financial support comes from assessments imposed by the Tax District on the property owners, with a minimal portion collected from membership dues. Its expenses primarily grow out of its security patrol contracts, road maintenance activities, and social activities. Legal expenses were substantially increased during the examination year and subsequent year due to the challenge by a local resident to the arrangement with the Tax District. ORG later ended its role in security contracts.

LAW:

Section 501(c)(4) of the Code provides for exemption from federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the 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 for the purpose of bringing about civic betterments and social improvements.

Rev. Rul. 72-102, 1972-1 C.B. 149, holds that certain nonprofit organizations of a type usually called homeowners' associations, which are formed to administer and enforce covenants for preserving the architecture and appearance of a housing development and to maintain streets, sidewalks, and other non-residential, non-commercial properties in the development of the type normally owned and maintained by a municipal government, may qualify for exemption under section 501(c)(4) of the Code.

Rev. Rul. 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.

Section ***** of the ***** Statutes states in pertinent part that a "district" means any *****. Section ***** of the ***** Statutes states in pertinent part that voters may establish a district for any or all of a number of purposes, including to ***** among other things.

Flat Top Lake Association, Inc., v. U.S., 868 F.2d 108 [89-1 USTC ¶9180], involved an organization's tax exempt status pursuant to IRC Section 501(c)(4). In the Flat Top Lake case the "Association acquired approximately 2,200 acres of land. It constructed a 230 acre artificial lake. The land surrounding the lake front was subdivided into lots and sold. Access to the property was provided by a two-lane road constructed by the Association. The road is not a public highway and bears a sign at the entrance to the development stating "Flat Top Lake Association, Private Property, Members Only." There are 375 lots in the Flat Top Lake development owned by members...

The Association performs "tasks of quasi-governmental nature" for the Association members and others. Those tasks include year-round water and sanitation services, snow removal from common areas, police protection, road and equipment maintenance and maintenance of the dam and other common areas. The Association is working with local authorities in considering construction of a sewage treatment plant. Further, it has promulgated a disaster relief plan in the event of failure of the dam, and it supplies a backup water supply to the nearby City of Beckley, a city of some 19,000 population."

The court concluded that the Flat Top Lake Association did not qualify for exempt status under section 501(c)(4) because it did not represent a community as the term is described in the published precedent. The area served did not bear a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district. The court further held that the benefits of the organization were limited to its members and benefits were not enjoyed by the general public. The exclusionary nature of the organization where benefits were limited to members indicated that the organization was not organized for social welfare but for the private benefit of its members.

GOVERNMENT'S POSITION:

Rev. Rul. 74-99, 1974-1 C.B. 131, is a key published precedent concerning ORG's right to continued exemption. The ruling cites the following requirements: (1) the organization 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) the organization 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.

The Flat Top Lake Association, Inc., v. U.S., 868 F.2d 108 [89-1 USTC ¶9180], confirmed the criteria in the revenue ruling. Even though the Flat Top Lake Association performed many more quasi governmental activities than ORG the court still ruled that the organization did not qualify for exemption because its size was not reasonably recognizable as a governmental subdivision and the benefits provided served the organization's members.

ORG serves a members only area. Security personnel expel all those who are determined to be non-residents of the City area without regard to their activities, such as fishing, bicycling, or enjoying the local park. Further, non-residents are warned away and informed the roadways and common areas maintained in the course of the organization's activities are private property and not for public use. Benefits of the maintenance are restricted to property owners.

As stated in the *Flat Top Lake* case, although it is unquestionably their right to do so, when a group of citizens elects to separate themselves from society and to establish an entity that solely advances their own private interests, no potential for general social advancement is implicated. The requirements expressed in *Rev. Rul. 74-99* have not been met.

TAXPAYER'S POSITION:

The organization's position has not been made known.

CONCLUSION:

Since the organization's activities serve the private benefit of its members, it is not operated for the promotion of social welfare. Accordingly, it does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.

Further, since ORG is not organized for pleasure, recreation, or other non-profitable purposes, it does not qualify for exemption from Federal income tax under section 501(c)(7) of the Code.

Similarly, since the organization's revenues are not primarily from member assessments, it does not qualify as a Homeowner's Association under section 528 of the Code.

ORG appears to be properly described by IRC 277 as a membership organization which is not exempt from taxation.

Gary Porter, CPA is licensed by the California Board of Accountancy and the Nevada Board of Accountancy. His practice is limited to common interest realty associations consisting of condominium, homeowners, timeshare, cooperative and condo hotel associations. Mr. Porter is the creator and coauthor of PPC's (Practitioners Publishing Company) Guide to Homeowners Associations and Other Common Interest Realty Associations and Homeowners Association Tax Library, in addition to more than 200 articles. Mr. Porter has been quoted or published in *The Wall Street Journal*, *Kiplinger's Personal Finance*, *Money Magazine*, *The Practical Accountant*, *Common Ground*, *Condo Management*, and *CAI's The Ledger Quarterly*. He has been working with homeowners associations since 1976, and has been a frequent presenter at industry and CPA venues; speaking at events for more than 30 state CPA societies.