

APPENDIX 6X

Revenue Ruling 80-63—Clarifies Revenue Ruling 74-99 in Defining Ability to Qualify for 501(c)(4) Status; Sets Conditions for Qualification; Defines “Community”^a

Cross Reference Data

Topical

Community
Exempt organizations
Form 990

Citation

IRC Section—501(c)(4)—2J
Cases—*Rancho Santa Fe Association v. U.S.A.*—4Q
 —*Flat Top Lake Association v. U.S.A.*—4E
 —*Commissioner v. Lake Forest, Inc.*—4C
 —*Lake Petersburg Association v. Commissioner*—4J
 —*Portland Golf Club v. U.S.*—4A
Regulations Section—1.337(d)-4—5G
Revenue Rulings—69-280—6F, 69-281—6G, 72-102—6I, 74-17—6K, 74-99—6L
Private Letter Rulings—8028010—7F, 200706014—7BZ
GCM—34219—8A, 35440—8C, 35570—8D, 38629—8I

Summary

Rev. Rul. 80-63 clarifies Rev. Rul. 74-99 by further defining an association's ability to qualify for exemption from federal taxation under IRC Sec. 501(c)(4) as follows:

- **No minimum area or certain number of homeowners is required to qualify.**
- **It may not restrict the use of its recreational facilities (such as swimming pools, picnic areas, and tennis courts) to members of the association.**
- **It may establish a separate organization to own and maintain recreational facilities and restrict their use to members of the association.**
- **It may establish a separate organization to own and maintain recreational facilities and restrict their use to members of the association.**

Clarifies Revenue Ruling 74-99 in Defining Ability to Qualify for 501(c)(4) Status; Sets Conditions for Qualification; Defines “Community”

Rev. Rul. 80-63, 1980-1 CB 116, (Jan. 1, 1980)

Section 501.—EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC. 26 CFR 1.501(c)(4)-1: Civic organizations and local associations of employees. (Also 1.501(c)(7)-1.) Homeowners' associations.—Answers are provided to specific questions as to whether the conduct of certain activities will affect the exempt status under section 501(c)(4) of the Code of otherwise qualifying homeowners' associations; Rev. Rul. 74-99 clarified.

[Text]

The Internal Revenue Service has received several inquiries asking whether the conduct of certain activities will affect the exempt status under section 501(c)(4) of the Internal Revenue Code of otherwise qualified homeowners' associations.

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 streetlights, 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.**

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 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.^b

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, 1969-1 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.

Rev. Rul. 74-99 is clarified.

Notes:

^a Rev. Rul. 80-63 clarifies the qualification criteria for exemption under IRC Sec. 501(c)(4) (Appendix 2J).

^b The authors believe that this interpretation would exclude all "gated" associations that cannot meet the definition of "community" in Rev. Rul. 74-99 (Appendix 6L).