



BEVERLY OAKS

Homeowners Association

Mr. Carl Smith
1518 Brentwood Drive
Irving, TX 75061

November 20, 2009

Dear Carl,

Thank you for your letter and for the time you invested in your research on behalf of the Association ([see letter dated 10-22-09](#))

To answer your question, our auditor is David DeVolt, CPA. DeVolt was retained to perform Association audits in 2007 during Roy Wilson's presidency. His practice includes many HOAs. He is highly recommended by both Principle Management Group and Precision Management - our past and current management companies. Attached, please find his analysis of the tax situation as you requested.

There are really two questions, Carl.

- 1) Were the past sales tax exemptions claimed by the Association legal as Steve Hillier asserts? ([see email dated 11-11-09](#))

Our advisors are telling us "no". This includes:

- ~ Wynnelle Leeth (tax analyst with the Comptroller Office in Austin),
- ~ Jimmy Martins (Martens, Seay, & Todd, sales tax experts, Austin),
- ~ David DeVolt, the Association's auditor, and
- ~ Joe Putnam, the Association's attorney.

I've attached documentation that should make this clear beyond any doubt. You can also do a quick verification with the state. All corporations with sales tax exemptions are listed here:

www.window.state.tx.us/taxinfo/exempt/exempt_search.html

Roy Wilson mentions in his recent email to the owners ([see email dated 11-11-09](#)) that the practice of filing exemption forms with vendors had been challenged before and a decision was made by the board to continue the practice. I don't think we want to continue to operate in violation of the law.

I believe at this point, most owners, including Roy, want to discontinue the practice. The Association's past liability will not be known until the audits are completed later this year.

2) Can the Association get a sales tax exemption for future purchases?

Our advisors are telling us "no". To even apply for a State sales tax exemption, we must first apply for, and receive a Federal 501(c) determination letter from the IRS. We don't qualify.

According to Leeth, DeVolt, and the documents you provided, to apply for a State Sale tax exemption the Association must have a Federal IRC 501(c) determination letter from the IRS. Contrary to what some believe, we do not have a Federal IRC 501(c) tax exemption.

This is simple to verify. All the IRC 501 (c) corporations are listed by the IRS online at www.irs.gov/app/pub-78/. Additionally, a look at our past Federal tax filings (example attached), you will see that we have paid income tax every year as far back as our records go. We file under IRC 528 (form 1120H*) which is an entirely different category.

The next question is, *can we get an Federal IRC 501(c) determination letter from the IRS?* According to DeVolt, who files these applications professionally, "no". We simply we do not meet the criteria (see attachment). I have attached his letter and the IRS's explanation as to why.

At the beginning of the current board term we informed all suppliers that we are obligated to pay sales tax and we have paid sales tax on all services in 2009.

Sincerely,



Robert Bauer
Board President

* Note: An IRC 501(c) files on form 990

From: david_devoltandco@xxmail.net

Subject: sales tax exemption

Date: November 19, 2009 5:31:59 PM CST

To: robertbauer@xxmail.com

Mr. Bauer,

Please be advised that the Beverly Oaks association **does not qualify** for a Texas sales tax exemption. The State of Texas requires that the association provide an approved IRS determination letter under IRC section 501 (c) in order to qualify for a sales tax exemption. The only code section that applies to homeowners associations is 501 (c)(4). Unfortunately, if the association does any exterior building maintenance or has common areas that are not open to the general public, the association would not qualify as a federal non profit entity. We have tried applications for several home associations that should qualify and the IRS is just not granting a 501(c)(4) status to any association.

The annual filing under section 528 does not automatically qualify the association as a federal non profit entity. Please note that the annual election for the association is to file either the form 1120 as a regular corporation, under the rules of IRC section 277 (member organizations) or the form 1120-H written just for homeowner associations under section 528. Under either form, the association is considered a taxable entity (corporation), not a non profit entity.

The granting of a Texas exemption from the Texas Franchise Tax is due to a special provision in the Texas code and does not also exempt the association from sales tax. The Texas State Comptroller's office has repeatedly reiterated that all associations are taxable for sales tax, unless they have a federal 501 (c) status.

The Association has not been granted a Texas sales tax exemption and does not have the right to claim a sales tax exemption from vendors. The decision to pay sales tax starting at the beginning of the 2009 year was prudent. To do otherwise would be tax fraud.

The association should continue to pay sales tax on all applicable taxable activities.

Please contact me if you have any additional questions.

Sincerely,

David DeVolt

DeVolt and Company, P.C.

Office: 972-980-4315

Fax: 972-702-0174

U.S. Treasury Circular 230 Notice: Any tax advice included in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding U.S. Federal and/or state tax related penalties or (2) promoting, marketing or recommending to another party any tax-related matter addressed herein



TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

SUSAN COMBS • COMPTROLLER • AUSTIN, TEXAS 78774

August 18, 2009

BEVERLY OAKS HOMEOWNERS ASSOCIATION, INC
12700 PARK CENTRAL DR STE 600
DALLAS, TX 75251-1537

According to the records of the Comptroller of Public Accounts, the following exemption from Texas taxes applies to the above organization:

Franchise tax, as of 05-01-1987

The organization is not exempt from Texas sales and use tax or hotel occupancy tax.

A Certificate of Account Status is available at www.window.state.tx.us/taxinfo/coasintr.html.

Texas taxpayer identification number: 30006620329

This exemption verification does not mean that the organization holds a permit for collecting or remitting any Texas taxes.

Exempt organizations must collect tax on most sales. For more information, please see our publication [Exempt Organizations - Sales and Purchases](#) (96-122). [Online registration is available](#). For information concerning sales taxpayer permit status, please use the [vendor search](#) we provide online.

Corporations that are registered in Texas with the Secretary of State must maintain a current registered agent and registered office address. Information is available from [Business and Nonprofit Forms page](#) of the [Secretary of State's Web site](#). Additionally, out-of-state corporations, limited liability companies, or limited partnerships transacting business in Texas may need to file a Certificate of Authority or Registration with the Texas Secretary of State. More information is available from the [Foreign or Out-of State Entities page](#) on the Secretary of State's Web site.

Our publications and other helpful information are available on our [web site](#). If you need more information, write to us at exempt.orgs@cpa.state.tx.us, or call us toll-free at (800) 252-5555.

TEXAS SALES AND USE TAX EXEMPTION CERTIFICATION

Name of purchaser, firm or agency	
Address (Street & number, P.O. Box or Route number)	Phone (Area code and number)
City, State, ZIP code	

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: _____


Street address: _____ City, State, ZIP code: _____

Description of items to be purchased or on the attached order or invoice:

Purchaser claims this exemption for the following reason:

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

 Purchaser	Title	Date
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NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.

Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier. Do **not** send the completed certificate to the Comptroller of Public Accounts.

Department of the Treasury
Internal Revenue Service

For calendar year 2003 or tax year beginning _____, 2003, and ending _____,

Use IRS label. Otherwise, print or type.	BEVERLY OAKS ASSOCIATION 2025 WILSHIRE IRVING, TX 75061	Employer identification number (see instructions) 75-1837529 Date association formed 5/21/1982
	Check if: <input type="checkbox"/> 1 Final return <input type="checkbox"/> 2 Name change <input type="checkbox"/> 3 Address change <input type="checkbox"/> 4 Amended return	

A Check type of homeowner's association: Condominium management association **Residential real estate association** Timeshare association

B Total exempt function income. Must meet 60% gross income test (see instructions).....	B	53,870.
C Total expenditures made for purposes described in 90% expenditure test (see instructions).....	C	55,082.
D Association's total expenditures for the tax year (see instructions).....	D	55,082.
E Tax-exempt interest received or accrued during the tax year.....	E	

Gross Income (excluding exempt function income)

1 Dividends	1	
2 Taxable interest	2	340.
3 Gross rents	3	
4 Gross royalties	4	
5 Capital gain net income (attach Schedule D (Form 1120))	5	
6 Net gain (or loss) from Form 4797, Part II, line 18 (attach Form 4797).....	6	
7 Other income (excluding exempt function income) (attach schedule).....	7	
8 Gross income (excluding exempt function income). Add lines 1 through 7.....	8	340.

Deductions (directly connected to the production of gross income, excluding exempt function income)

9 Salaries and wages.....	9	
10 Repairs and maintenance	10	
11 Rents.....	11	
12 Taxes and licenses	12	
13 Interest.....	13	
14 Depreciation (attach Form 4562).....	14	
15 Other deductions (attach schedule)	15	
16 Total deductions. Add lines 9 through 15.....	16	0.
17 Taxable income before specific deduction of \$100. Subtract line 16 from line 8.....	17	340.
18 Specific deduction of \$100.....	18	\$100.

Tax and Payments

19 Taxable income. Subtract line 18 from line 17.....	19	240.					
20 Enter 30% of line 19. (Timeshare associations, enter 32% of line 19.).....	20	72.					
21 Tax credits (see instructions).....	21						
22 Total tax. Subtract line 21 from line 20. See instructions for recapture of certain credits.....	22	72.					
23 Payments: a 2002 overpayment credited to 2003.....							
b 2003 estimated tax payments.....			23 a	23 b	c Total	23 c	0.
d Tax deposited with Form 7004.....			23 d				
e Credit for tax paid on undistributed capital gains (attach Form 2439).....			23 e				
f Credit for Federal tax on fuels (attach Form 4136).....			23 f				
g Add lines 23c through 23f.....			23 g	0.			
24 Tax due. Subtract line 23g from line 22. See instructions for depository method of tax payment.....			24	72.			
25 Overpayment. Subtract line 22 from line 23g.....	25						
26 Enter amount of line 25 you want: Credited to 2004 estimated tax ▶ <input type="checkbox"/> Refunded ▶ <input type="checkbox"/>	26						

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer _____	Date _____	Title _____	May the IRS discuss this return, with the preparer shown below? (see instrs) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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Paid Preparer's Use Only

Preparer's signature ▶ _____	Date _____	Check if self-employed... <input type="checkbox"/>	Preparer's SSN or PTIN _____
Firm's name (or yours if self-employed), address, and ZIP code ▶ Interstate Business Management 1812 N. Haskell Ste 103 Dallas, TX 75204		EIN _____	Phone no. (214) 827-6088

Homeowners' and Tenants' Associations

Introduction

A homeowners' association is an organization that consists of all lot owners in a certain development and that enforces covenants for preserving the architecture and appearance of the development.

- Membership is usually compulsory.
- Generally, it also owns and maintains certain green areas and sidewalks.
- Depending on its activities, a homeowners' association may qualify for exemption from federal income tax as an organization described in IRC 501(c)(4), IRC 501(c)(7), or IRC 528.

Of the three routes to tax-exempt status, IRC 501(c)(4) imposes the strictest standard. To be described in IRC 501(c)(4), a homeowners' association must primarily serve the community rather than the private interests of its members. Therefore, the principal obstacle to exemption is the degree of private benefit involved in the operation of the homeowners' association.

Lake Forest

The leading case in the area of homeowners' associations is Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (1962), which arose under the predecessor of IRC 501(c)(4), § 101(8) of the 1939 Code. Lake Forest was a nonprofit membership-housing cooperative organized by World War II veterans and others. It provided low cost housing to its members. Focusing on the words of the statute, the court concluded that Lake Forest was not "civic," but simply a private cooperative organization; that its operation was not a work of "social welfare," but a private economic enterprise; and that even if its objects included a contribution to social welfare, that was not its aim "exclusively."

- The holding in Lake Forest is reflected in Rev. Rul. 69-280, 1969-1 C.B. 152. The organization discussed in Rev. Rul. 69-280 was formed to provide maintenance of exterior walls and roofs of homeowner members in a development. In concluding that the organization does not qualify for IRC 501(c)(4) exemption as a social welfare organization, the revenue ruling finds the organization's operations to be similar to Lake Forest in that both were fundamentally self-help enterprises. Rev. Rul 69-280 concludes:

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.

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Homeowners' and Tenants' Associations, Continued

**Rev. Rul.
72-102**

Rev. Rul. 72-102, 1972-1 C.B 149, attempted to enunciate standards that could be used to determine whether a homeowners' association could qualify (or maintain) IRC 501(c)(4) exempt status.

- The organization described in Rev. Rul. 72-102 is a membership organization formed by a developer.
- It 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.
- Prospective homebuyers are advised that membership in the organization is required of all owners of real property within the housing development.
- The organization is supported by annual assessments and member contributions. Its activities are for the common benefit of the whole development rather than for individual residents or the developer.

Rev. Rul. 72-102 concludes as follows:

For the purposes of section 501(c)(4) of the Code, a neighborhood, precinct, subdivision, or housing development may constitute a community. For example, exempt civic leagues in urban areas have traditionally represented neighborhoods or other subparts of much larger political units. By administering and enforcing covenants, and owning and maintaining certain non-residential, non-commercial properties of the type normally owned and maintained by municipal governments, this organization is serving the common good and the general welfare of the people of the entire development. Even though the organization was established by the developer and its existence may have aided him in selling housing units, any benefits to the developer are merely incidental. Also, even though the activities of the organization serve to preserve and protect property values in the community, these benefits that accrue to the property owner-members are likewise incidental to the goal to which the organization's activities are directed, the common good of the community. Therefore, it is held that the organization is exempt from Federal income tax under section 501(c)(4) of the Code.

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Homeowners' and Tenants' Associations, Continued

Rev. Rul. 72-102, continued

Revenue Ruling 69-280, C.B. 1969-1, 152, which holds that a non-profit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt under section 501(c)(4) of the Code, is distinguished because that organization was operated primarily and directly for the benefit of individual members rather than for the community as a whole.

Rev. Rul. 74-17

Rev. Rul. 74-17, 1974-1 C.B. 130, discusses a condominium housing association and reaches an adverse conclusion under IRC 501(c)(4). Rev. Rul. 74-17 finds that homeowners' associations and condominium associations, even though they furnish similar services, are essentially different, and must be treated differently for purposes of IRC 501(c)(4). Rev. Rul. 74-17 concludes as follows:

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.

Rev. Rul. 74-99

After publication of Rev. Rul. 72-102, it became apparent its standard of "community" was being equated with a single housing development.

There was also concern that Rev. Rul 72-102 made no mention of recreational facilities (none were present in the underlying case).

Additionally, the term "common areas" needed more precise definition to prevent liberal interpretations that might encompass areas that are really little more than extensions of privately owned property

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Homeowners' and Tenants' Associations, Continued

Rev. Rul. 74-99, continued Rev. Rul. 74-99, 1974-1 C.B. 131, modifies Rev. Rul 72-102. Rev. Rul 74-99 describes the typical organization and the threshold problem as follows:

The characteristics of the organization of homeowners described in Rev. Rul. 72-102 are generally typical of many such organizations formed in recent years that seek exemption under section 501(c)(4) of the Code and may be summarized as follows: The organization is formed by a commercial real estate developer as an integral part of a plan for the development of a subdivision. Membership in the association is required of all purchasers of lots in the development. Membership is open only to the developer (at least for such time as he owns property in the development) and those who purchase lots. The organization is supported by periodic assessments against the members and an unpaid assessment constitutes a lien on the property of the homeowner-member. The stated purposes of the organization are, generally speaking, to administer and enforce covenants for preserving the architecture and appearance of the given real estate development, and to own and maintain common green areas, streets, and sidewalks.

The foregoing format is spelled out in written documents that form a part of, and are inextricably tied to, enforceable contracts for the sale and purchase of private property. In the light of this combination of factors, the *prima facie* presumption is that these organizations are essentially and primarily formed and operated for the individual business or personal benefit of their members, and, as such, do not qualify for exemption under section 501(c)(4) of the Code. However, an organization of this kind may in certain circumstances overcome the presumption and qualify for recognition of exemption under section 501(c)(4).

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Homeowners' and Tenants' Associations, Continued

Rev. Rul. 74-99, continued Essentially, Rev. Rul. 74-99 concludes that to overcome the presumption, to qualify for exemption under IRC 501(c)(4), a homeowners' association:

- Must serve a "community" which bears a reasonably recognizable relationship to an area ordinarily identified as governmental,
- Must not conduct activities directed to the exterior maintenance of private residences, and
- The common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

On the issue of "community," Rev. Rul. 74-99 states as follows:

A community within the meaning of section 501(c)(4) of the Code and the regulations is not simply an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision and the sale and purchase of homes therein. Although an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term as used in that section has traditionally been construed as having reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof.

Rev. Rul. 80-63 Rev. Rul. 80-63, 1980-1 C.B. 116, was issued to discuss, in question and answer format, certain issues raised by Rev. Rul. 74-99.

Rev. Rul. 80-63 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?

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Homeowners' and Tenants' Associations, Continued

Rev. Rul. 80-63 **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.

Answer

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.

Rev. Rul. 80-63 **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?

Rev. Rul. 80-63 **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.

Answer

- For purposes of Rev. Rul. 74-99, recreational facilities are included in the definition of "common areas."

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Homeowners' and Tenants' Associations, Continued

Rev. Rul. 80-63 Can a homeowners' association establish a separate organization to own and
Question 3 maintain recreational facilities and restrict their use to members of the
association?

Rev. Rul. 80-63 **Yes.** An affiliated recreational organization that is operated totally separate
Answer 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.

Rev. Rul. 80-63 Can an exempt homeowners' association own and maintain parking facilities
Question 4 only for its members if it represents an area that is not a community?

Rev. Rul. 80-63 **No.** By providing the facilities only for the use of its members the association
Answer 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.

Flat Top Lake In Flat Top Lake Association v. United States, 868 F.2d 108 (4th Cir. 1989),
Association the court concluded that a homeowners' association that encompassed a very
large area but restricted use of its facilities to its members does not qualify for
exemption under IRC 501(c)(4).

Summary The above-cited authorities disclose that the Service will not accept the
of the position that an association's geographic area constitutes a "community," as
"Community" that term is used in Rev. Rul. 74-99, without some showing that the
Issue association is, in the words of the Flat Top Lake opinion, "an active part of
society [rather than] a private refuge for those who would live apart." Id. at
113.

Rev. Rul. Although an association may not benefit a "community" within the meaning
75-286 of Rev. Rul. 74-99, if its activities are not limited to its members, but are
directed to the general public, it can qualify for exemption under IRC
501(c)(4). That is the message of Rev. Rul. 75-286, 1975-2 C.B. 210.

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Homeowners' and Tenants' Associations, Continued

**Rev. Rul.
75-286,
continued**

Rev. Rul. 75-286 concludes that an organization formed by the residents of a city block to preserve and beautify that block may qualify for exemption under IRC 501(c)(4), even though the element of private benefit is sufficient to disqualify it from exempt status under IRC 501(c)(3). Its activities include paying the city government to plant trees in public areas, picking up litter and refuse and placing shrubbery in the block's public areas.

Although membership was restricted to residents of the block, owners of property or individuals doing business there, the activities improved public property. The salient conclusion here is that even though the organization's activities were limited to a single block, the community benefited from such activities.

**The IRC
501(c)(7)
Alternative**

A homeowners' association whose primary function is to own and maintain certain recreational areas and facilities may opt for exemption as a social club under IRC 501(c)(7) rather than as a social welfare organization under IRC 501(c)(4).

- This alternative may prove to be desirable where the association seeks to restrict use of its facilities to members, offers incidental community benefits, and has little or no nonmember income that is subject to tax under IRC 512(a)(3). Rev. Rul. 69-281, 1969-1 C.B. 155, and Rev. Rul. 80-63 provide the authority for this position.
 - However, as noted in Rev. Rul. 75-494, 1975-2 C.B. 214, a homeowners' association may not qualify under section 501(c)(7) if it owns and maintains residential properties that are not a part of its social facilities, administers and enforces covenants for preserving the architecture and appearance of the housing development, or provides the development with fire and police protection.
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Homeowners' and Tenants' Associations, Continued

The IRC 528 Alternative

IRC 528, as added by § 2101 of the Tax Reform Act of 1976, P.L. 94-455, 90 Stat. 1525, provides an elective exemption for certain homeowners associations that are described in IRC 528(c). This Code provision was enacted because many homeowners associations found it difficult to meet the requirements for exemption under IRC 501(c)(4).

IRC 528 exempts from income tax any dues and assessments received by a qualified homeowners' association that are paid by property owners who are members of the association, where the assessments are used for the maintenance and improvement of association property. Thus, all homeowners' associations described therein may be granted a sort of quasi-exempt status by virtue of their own election.

IRC 528 defines a "homeowners' association" as an organization which is a condominium management association or a residential real estate management association if:

- It is organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property,
- It elects to have the section apply for the taxable year,
- No part of the net earnings of the association inures to any private shareholder or individual,
- 60 percent or more of the association's gross income consists solely of amounts received as membership dues, fees, assessments from owners of residential units or residences or residential lots (exempt function income), and
- 90 percent or more of the association's expenditures for the taxable year are expenditures for the acquisition, construction, management, maintenance, and care of association property.

If qualified, an association makes the election by timely filing a Form 1120-H, *U.S. Income Tax Return for Homeowners' Associations*, according to the instructions for that return

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Homeowners' and Tenants' Associations, Continued

Summary of Homeowners' Associations

A homeowners' association:

- Must meet a community standard.
 - Must not provide exterior maintenance for the private residences of members.
 - Must permit the general public to have access to any common areas it maintains.
 - May seek tax relief under IRC 528 if it does not qualify under IRC 501(c)(4).
 - Must file Form 1120-H to elect the tax relief provisions of IRC 528.
-

A Note on Tenants' Associations

An organization formed to promote the legal rights of tenants in a community by publishing a newsletter, testifying before administrative and legislative bodies and occasionally initiating litigation qualifies under IRC 501(c)(4). Rev. Rul. 80-206, 1980-2 C.B. 185.

However, an organization made up of tenants in an apartment complex which represented those tenants in negotiations with apartment management would not qualify. Rev. Rul. 73-306, 1973-2 C.B. 179.
