Internal Revenue Service
Appeals Office
4330 Watt Ave, SA 7890
Sacramento, CA 95821-7012

Release Number: **201429030**
Release Date: 7/18/2014
Date: April 24, 2014

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****
****

Department of the Treasury

Employer Identification Number:
****

Person to Contact:

******
Employee ID Number: *****
Tel: ***
Fax: ***

Tax Period(s) Ended:
April 30, forward

UIL: 501.04-00

Certified Mail

Dear ****:

This is a final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Code section 501(c)(4).

The revocation of your exempt status was made for the following reason(s):

Your primary purpose is providing services to your members and your member's guests, not to the general public as an organization described under Internal Revenue Code Section 501(c)(4).

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

Please show your employer identification number on all returns you file and in all correspondence with Internal Revenue Service.

We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

You also 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 matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter.

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Sincerely Yours,

***
Appeals Team Manager

Enclosure: Publication 892

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Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
1100 Commerce Street
Dallas, TX 75242

Department of the Treasury

Date: September 17, 2012

Taxpayer Identification Number:

Form:
990
Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:
Telephone:
Fax:

Certified Mail – Return Receipt Requested

Dear

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 accept our findings, please sign and return the enclosed Form 6018-A, Consent to Proposed Action. We will then send you a final letter modifying or revoking your 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 the event of revocation, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the examining agent within 30 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.

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. Please note that Fast Track Mediation Services referred to in Publication 3498, generally do not apply after issuance of this letter.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you.

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.

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You may also request that we refer this matter for technical advice as explained in Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status. 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.

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:

Internal Revenue Service
Office of the Taxpayer Advocate

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,

Nanette M. Downing
Director, EO Examinations

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

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Form 886-A	U.S. Treasury Department-Internal Revenue Service **EXPLANATION OF ITEMS**	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended April 30, 20XX

Revocation

ISSUE:

Does the organization satisfy the requirements of a social welfare organization per IRC Section 501(a) as described in IRC 501 Section (c)(4) as a homeowner's association, by limiting access and use of the majority of its common facilities to its members and their guests and is not open to the general public?

FACTS:

was incorporated in May 19XX. It was established to construct, renovate, operate and maintain the common facilities of Golf and Camping Club. The facility is located in .

applied for and was granted tax exempt status under Internal Revenue Code (IRC) 501(a) as described in IRC Section 501(c)(4) as a homeowner's association to promote social welfare on January 21, 19XX.

is composed of around1,500 members who are lot owners of the subdivision.

maintains the common facilities within the subdivision which include:

a. Roads
b. Water supply and sewage treatment
c. Swimming pool and recreation facility
d. Boat slips
e. Bath houses for the campgrounds
f.

The golf course and golf clubhouse are outside of the subdivision premises and open to the public.

Access to the subdivision and golf course is available though the road named . The road splits with a right turn leading to the golf course and clubhouse facility. The other road leads to the subdivision where entrance is restricted to members and their guests with an electronically controlled gate.

There is a sign on the road leading to the subdivision which states:
Caution
Electric Gates Ahead
Private Club
No Trespassing
Members and Guests Only

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website shows the electronically controlled gate which limits access to the subdivision and the majority of its facilities to its guests and members (with the exception of the golf course). Copies of pictures and notes from the website are shown in the following pages.

Main Gate

is gated for added security. All property owners who are up to date on their association fees have a card to gain access. This gate is monitored 24/7.

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The facilities located within the subdivision that cannot be accessed by the general public with the electronically controlled gate include:

Planning a family reunion and need more room to feed all those people? You can rent the _____ for private functions. Call the _____ office for prices.

Clubhouse
The clubhouse is for our community meetings, dances and other events requiring a large area.

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Recreation Center
The Recreation Center offers billiards, air hockey, video games and snacks. A small convenience store has been opened at this location and operates during pool hours.

Swimming Pool
Take a dip in the pool to cool off or just soak up some sun. Sliding board, diving board and even a Pool for the tiny tikes.

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Boat Landing

has a boat landing for property owners and their guests. There is no charge to use the boat landing however you must have a sticker on your boat. Stickers can be purchased at the security office for $

The members of the board of directors are assigned to manage the affairs of the corporation. It is composed of seven members who meet on a monthly basis. It also presides over the annual meeting which is open to all members. The members elect the members of the board during the annual meeting and discuss any type of issues and concerns over the affairs of the subdivision.

The members of the board of directors select the officers, which are the President, Vice President, Secretary, Assistant Secretary and a Treasurer.

employs an officer manager with one support staff.

An interview was conducted with , current Treasurer on 5/29/20XX. It was conducted at their administrative office located in . In addition to the above facts and background noted earlier, provided the following relevant information:
a. Membership to is limited to homeowners whose names are on the deed.
b. currently owns the common facilities which include the golf course and clubhouse, swimming pool, recreation hall, boat slips, electric distribution system, water supply, sewage treatment facility and bath houses for the camp grounds.
c. Revenue from the assessments and fees are used to build, maintain and operate the common facilities, including its road system.
d. The common facilities are for the use of its members and their guests, with the exception of the golf course and clubhouse which is open to the public.
e. The lots in the subdivision are classified between the mobile home and campground lots. Mobile home lots have a more permanent structure; therefore, their owners are directly responsible for their electric supply bills to the electric power company. Campground lot owners are supplied by electricity from . purchases electric from the electric power company and redistributes the electric supply to the campground lot owners. Therefore, the campground lot owners pay their electric bills to which in turn pay the electricity from the electric power company. That is the reason why employs electric meter readers.

Officer provided a tour of the subdivision and location of the common facilities inside the subdivision.

A closing conference with was held on June 1, 20XX. The proposal for revocation of tax exempt status under IRC Section 501(c)(4) was presented. In the event

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that the proposed revocation is sustained, has the option to elect to file a Form 1120 H if it satisfies the requirements of IRC 528 for a homeowner's association.

was provided with copies of Revenue Ruling 74-99 and Revenue Ruling 80-63.

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LAW:

IRC SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.
501(a) EXEMPTION FROM TAXATION. —An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

IRC Section 501(c)(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees and the net earnings are devoted exclusively to charitable, educational, or recreational purposes.

Revenue Ruling 74-99, 1974-1 CB 131
Homeowners association, preserving appearance and maintaining common areas.--
A homeowners association, to qualify for exemption under section 501(c)(4) of the Code, (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; Rev. Rul. 72-102 modified.

Revenue Ruling 80-63, 1980-1 CB 116
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.

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.

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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.

Revenue Ruling 80—63, 1980-1 CB 166 answered specific questions that have been raised relating to Revenue Ruling 74-99 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.

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

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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.

868 F.2d 108, 63 A.F.T.R.2d 89-721, 89-1 USTC P 9180
United States Court of Appeals, Fourth Circuit.

FLAT TOP LAKE ASSOCIATION, INC., Plaintiff-Appellant,
v. UNITED STATES of America, Defendant-Appellee.

Association consisting of owners of property surrounding artificial lake that sought to restrict development to members only brought civil action seeking judicial determination that it currently was and had been exempt from federal taxation as social welfare organization. The United States District Court for the Southern District of West Virginia, at Beckley, Elizabeth V. Hallanan, J., granted summary judgment for United States, and association appealed. The Court of Appeals, K.K. Hall, Circuit Judge, held that: (1) organization that operated for exclusive benefit of members did not serve as "community," as that term related to broader concept of social welfare, for purposes of

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tax exemption, and (2) association that had done everything within its power to create wholly private environment for its members was not "community," within meaning of federal tax exemption, and could not claim tax exemption for benefiting itself.

Affirmed.

IRC Section 528(c)(1) provides, in part, that the term "homeowners association" means an organization that elects (at such time and in such manner as the Secretary of Treasury by regulations prescribes) to have § 528 apply for the taxable year.

Section 1.528-8(a) of the Treasury Regulations provides that a separate election to be treated as a homeowners association under § 528 must be made for each taxable year. This election must be made by filing a properly completed Form 1120-H (or such other form as the Secretary of Treasury may prescribe).

Section 1.528-8(b) of the Treasury Regulations provides that for taxable years ending after December 30, 1976, the election must be made not later than the time, including extensions, for filing an income tax return for the year in which the election is to apply.

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Form 886-A	U.S. Treasury Department-Internal Revenue Service **EXPLANATION OF ITEMS**	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended April 30, 20XX

TAXPAYER'S POSTION:

In response to the proposed revocation of its tax exempt status, presented during the closing conference with the officer on June 1, 20XX, provided its position in a letter dated July 12, 20XX as follows:

"We have consulted with an independent CPA firm regarding our current tax exempt status. We believe our association meets the requirements found in Revenue Ruling 74-99 to be classified for tax exemption under 501(c)(4) of the Code because of the following:

1. Our association serves a community which bears a reasonable recognizable to an area ordinarily identified as governmental,
2. Our association does not conduct activities directed to the exterior maintenance of private residences, and
3. The common area or facilities it owns and maintains must be for the use and enjoyment of the general public.

Our position in meeting these requirements is as follows:
1. The golf course is available to anyone living in the surrounding area.
2. Our community should be recognized as the general public as a whole.

With the guidance of outside consultation and the review of our original tax exempt application, the Board of Directors for believes we have met the requirements to be classified as an Internal Revenue Code Section 501(c)(4) organization. Therefore, the Association is tax-exempt under Section 501(a) of the Code".

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GOVERNMENT'S POSITION:

was incorporated in 19XX to construct, renovate, and operate the common facilities of the subdivision and golf club located in . It is composed of around 1,500 members. Membership is limited to homeowners whose names are on the deed.

was granted tax exempt status per IRC 501(a) as described under IRC 501(c)(4) as a social welfare organization in 19XX.

Inspection of the subdivision showed that entrance to the subdivision and its common facilities located within the subdivision such as the swimming pool, recreation hall, boat slips, bath houses, and are restricted to members by a gate which can be opened with a card. These common facilities within this gated subdivision are for the use of its members and their guests.

By restricting access and use of its common facilities as noted above, with the exception of the golf course and clubhouse, fails to qualify as a social welfare organization under IRC Section 501(c)(4). This position is supported by Revenue Ruling 74-99 as clarified by questions 1 and 2 of Revenue Ruling 80-63.

Question 1 in Revenue Ruling 80-63:
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 the precise definition of the term "community". 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.

Question 2 in Revenue Ruling 80-63:
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:

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

The court case of Flat Top Lake Association, Inc. v. United States of America, 868 F.2d 108, 63 AFTR 2d 89-721, 89-1 USTC P 9180 supports the government's position in the District Court when it ruled that a private association of homeowners which restricts its facilities to the exclusive use of its members does not meet the requirements of exemption set out in Section 501(c)(4) of the Internal Revenue Code of 1954.

The Fourth Circuit Court of Appeals affirmed the District Court's decision and further clarified matters by stating and citing the following:
a. An organization that operates for the exclusive benefit of its members does not serve a "community" as that term relates to the broader concept of social welfare.
b. 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 a integral part of a plan for the development of a real estate subdivision and the sale and purchase of homes therein.
c. It cited the intent of Congress where it believed that an organization cannot serve social welfare if it denies its benefits to the general public.

It is position that it is entitled to continued exemption because 1) the golf course is available to anyone living in the surrounding area; and 2) its community should be recognized as the general public as a whole.

The Government does not dispute position that the golf course is accessible to the public. However, the government would like to point out that owns and maintains other facilities that are restricted to the use of its members and guests such as the swimming pool, recreation hall, boat slips, bath houses and .
They are all considered recreational facilities included in common facilities as defined by Rev. Rul. 74-99 as common areas.

By limiting the use of the majority of the common areas to its members, it does not qualify as a community as required by Rev. Rul. 74-99. In addition, KK Hall of the Court of Appeals which affirmed the decision of the District Court of the Southern District of West Virginia in Flat Top Lake Association v. United States of America held that: (1) an organization that operated for the exclusive benefit of members did not serve as a "community", as that term related to broader concept of social welfare, for purposes of tax exemption, and (2) an association that had done everything within its powers to create wholly private environment for its members was not a "community" within the

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meaning of federal tax exemption, and could not claim tax exemption for benefiting itself.

Therefore, exempt status under IRC Section 501(c)(4) should be revoked, effective May 1, 20XX.

In the event that the proposed revocation of its tax exempt status under IRC Section 501(c)(4) is sustained, has the option of electing to be classified as a homeowners association under IRC Section 528 if it satisfies the requirements of that Code section.

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CONCLUSION:

does not continue to qualify for exemption under IRC section 501(c)(4) as a homeowners association which promotes social welfare because it restricts access to its common facilities such as the swimming pool, recreation hall, boat slips, roads, bath houses and to its members and their guests, and such facilities are not open to the general public. Therefore, revocation of tax exempt status is proposed, effective May 1, 20XX.

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