

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

In Re:

Refer Reply To:  
CC:PSI:B07  
PLR-112349-04  
Date:  
November 22, 2004

Legend:

Taxpayer:

a:  
b:  
c:  
d:

Dear :

We received your letter, submitted on behalf of Taxpayer, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an election to be treated as a homeowners association under § 528 of the Internal Revenue Code for the taxable years a through b. This letter responds to your request.

The information submitted and the representations made are as follows: Taxpayer is a residential real estate management association that was established by Developer in a. Developer handled the management responsibilities until the management functions were transferred to Taxpayer on c. Because neither the previous nor current officers were aware of the income tax filing requirements for a homeowners association, nor were they told of any filing requirements by Developer, no income tax returns were filed for the association prior to d.

Section 528 and § 1.528-1 of the Income Tax Regulations generally provide that homeowners associations meeting the requirements of § 528(c) may elect to be treated as tax-exempt organizations, but only to the extent of their exempt function income.

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 by regulations prescribes) to have § 528 apply for the taxable year.

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

Section 1.528-8(b) 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.

Section 301.9100-1(c) provides that the Commissioner, in an exercise of discretion, may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but not more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election under § 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Based on the facts and representations submitted with your request, we have determined that the requirements of § 301.9100-3 have been satisfied with respect to taxable years a through b. Therefore, an extension of time is granted, until 60 days from the date of this ruling, for making an election to be treated as a homeowners association under § 528 for the taxable years a through b.

We note, however, that the burden is upon Taxpayer to produce, upon request, any records necessary to establish to the satisfaction of the Service that Taxpayer meets all of the requirements of § 528(c)(1).

Except as expressly ruled herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter or under any other provisions of the Code. Moreover, we express no opinion concerning the assessment of interest, additions to tax, additional amounts, or penalties for failure to file an income tax return with respect to any year. Specifically, we express or imply no opinion on whether Taxpayer qualifies as a homeowners association under § 528(c).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be attached to Taxpayer's election for each year covered by this ruling letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

*/s/*

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

cc: