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Cited

As of: Mar 07, 2008

**MISSION HEIGHTS HOMEOWNERS ASSOCIATION, INC., Plaintiff, v.
UNITED STATES OF AMERICA, Defendant.**

Civil No. 95-650-S (RBB)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

*1996 U.S. Dist. LEXIS 20669; 96-2 U.S. Tax Cas. (CCH) P50,489; 78 A.F.T.R.2d (RIA)
6399*

August 26, 1996, Decided

August 28, 1996, FILED

DISPOSITION: [*1] United States' Motion for Summary Judgment GRANTED and the plaintiff shall take nothing by way of its complaint; Mission Heights Homeowners Association's Motion for Summary Judgment DENIED.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff homeowners association and defendant United States filed cross motions for summary judgment to determine the federal tax liability of the homeowners association on its excess member assessment income pursuant to 26 U.S.C.S. §§ 61, 528.

OVERVIEW: The court agreed with the government that pursuant to 26 U.S.C.S. § 61, the homeowners association was required to include all of the regular assessments it received from the association's members in its computation of gross income for purposes of figuring its federal taxes. The court noted that the homeowners association was obligated to be taxed like any corporation unless it applied for tax exempt status pursuant to 26 U.S.C.S. § 528. Otherwise, to avoid taxes, the homeowners association had to refund the excess

assessments to its members or apply such excess amounts to the members' subsequent year's assessments in order to remove such amounts from its taxable income. The court held that, having failed to make a timely election under 26 U.S.C.S. § 528, refund the excess amounts, or apply the amounts to the next year's assessments, the homeowners association was liable for paying taxes on the excess assessments.

OUTCOME: The court granted summary judgment in favor of the United States, denied the homeowners association's motion for summary judgment, and ordered that the homeowners association take nothing by way of its complaint.

LexisNexis(R) Headnotes

Tax Law > Federal Income Tax Computation > Compensation & Welfare Benefits > Tips, Wages & Other Compensation (IRC secs. 61, 3121, 3231) > General Overview

Tax Law > Federal Income Tax Computation > Gross Income (IRC sec. 61)

[HN1] Gross income is defined by federal law for

purposes of federal taxation and, pursuant to 26 U.S.C.S. § 61, gross income means all income from whatever source derived.

Tax Law > Federal Tax Administration & Procedure > Tax Credits & Liabilities > Assessments (IRC secs. 6201-6207, 6501-6533) > General Overview

Tax Law > Federal Taxpayer Groups > C Corporations > General Overview

Tax Law > Federal Taxpayer Groups > Exempt Organizations > Conditions & Restrictions (IRC secs. 501-505, 521, 526-530)

[HN2] Homeowners associations include all regular assessments received from the association members in their gross income for purposes of determining their federal tax liability. A homeowners association is taxed like any other corporation if it elects not to file for exempt status under 26 U.S.C.S. § 528. The amounts placed in their operating reserve accounts are includible in income, and regular, or general, assessments must be included in income pursuant to 26 U.S.C.S. § 61.

Tax Law > Federal Tax Administration & Procedure > Tax Credits & Liabilities > Assessments (IRC secs. 6201-6207, 6501-6533) > General Overview

Tax Law > Federal Taxpayer Groups > Exempt Organizations > Conditions & Restrictions (IRC secs. 501-505, 521, 526-530)

[HN3] Under federal law, homeowners associations have two options available to them to properly avoid paying taxes on their excess member assessment income. First, an association may elect to be treated as an exempt organization, pursuant to 26 U.S.C.S. § 528, and thereby avoid paying taxes on member assessment income. Alternatively, an association may, pursuant to the administrative procedures enumerated in a prior revenue ruling, refund excess assessments to its members or apply such excess amounts to the members' subsequent year's assessments, thereby removing such amounts from income.

COUNSEL: ALAN D. BERSIN, United States Attorney, ROBERT H. PLAXICO, Assistant United States Attorney.

GEORGE N. HARRIS, JR., Trial Attorney, Tax Division, U.S. Department of Justice, Washington, D.C., Attorneys for the United States of America.

For MISSION HEIGHTS HOMEOWNERS, ASSOCIATION, INC., plaintiff: Daniel J Winfree, Law Office of Daniel J. Winfree, San Diego, CA.

JUDGES: Edward J. Schwartz, UNITED STATES DISTRICT JUDGE

OPINION BY: Edward J. Schwartz

OPINION

ORDER GRANTING UNITED STATES' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter came on for hearing on August 5, 1996. George N. Harris, Jr., Trial Attorney, Tax Division, U.S. Department of Justice, appeared on behalf of the United States of America. Daniel J. Winfree, Esq., appeared on behalf of Mission Heights Homeowners Association.

Upon consideration of the pleadings on file herein, in particular the recitation of facts contained in the government's motion for summary judgment which the plaintiff [*2] adopted as its own, and the arguments of counsel, the Court finds as follows:

1. [HN1] Gross income is defined by federal law for purposes of federal taxation and, pursuant to 26 U.S.C. § 61, gross income means all income from whatever source derived;

2. The relevant statutes, cases, and secondary materials reveal a clear intention on the part of Congress that [HN2] homeowners associations include all regular assessments received from the associations' members in gross income;¹

3. [HN3] Under federal law, homeowners associations have two options available to them to properly avoid paying taxes on their excess member assessment income. First, an association may elect to be treated as an exempt organization, pursuant to 26 U.S.C. § 528, and thereby avoid paying taxes on member assessment income. Alternatively, an association may, pursuant to the administrative procedures enumerated in *Revenue Ruling 70-604, 1970-2 C.B. 9*, refund excess assessments to its members or apply such excess amounts to the members' subsequent year's assessments, thereby removing such amounts from income;

4. The assessments received by Mission Heights Homeowners Association, from its members, were includible in gross income [*3] by the Association;

5. The plaintiff did not make a timely *Section 528* election. Likewise, it failed to follow the procedures identified in *Revenue Ruling 70-604* so that it could exclude its excess assessments from income. In other words, the plaintiff neither refunded the excess assessment amounts to its members nor applied such amounts to the members' subsequent year's assessments.

1 See, e.g., 26 U.S.C. § 528; H.R. Report No. 94-658, 94th Cong., 2d Sess., reprinted in, 1976 U.S.C.C.A.N. 2897, 3222 (homeowners association taxed like any other corporation if it elects not to file under *Section 528*); *Concord Village, Inc. v. Comm.*, 65 T.C. 142 (1975), cross-appeals dismissed by agreement of parties, (9th Cir. 1977) (amounts placed in operating

reserve accounts are includible in income); *Revenue Ruling 75-371*, 1975-2 C.B. 52 (regular, or general, assessments must be included in income citing 26 U.S.C. § 61).

Based on the foregoing premises

IT IS HEREBY ORDERED that the United States' Motion [*4] for Summary Judgment is GRANTED and the plaintiff shall take nothing by way of its complaint;

IT IS HEREBY FURTHER ORDERED that Mission Heights Homeowners Association's Motion for Summary Judgment is DENIED.

Dated: AUG 26 1996

Edward J. Schwartz

UNITED STATES DISTRICT Judge