

Frank Comment: This public statement was written by CA Senator John V. Briggs, (Retired) who resided in this HOA at that time. He was a 17-year legislator from the Orange County area of CA in the 1970s. A close read of this public statement shows he was 100% correct, but the association board, finance committee, auditor, and attorney rejected it and refused to check the facts or make changes.

SUN CITY ANTHEM HOMEOWNERS ASSOCIATION TAX FACTS

JOHN BRIGGS WORKING DOCUMENT ---- MARCH 9, 2008

THE LATEST **SCA 1120 CORPORATE TAX RETURN** ENDING **DECEMBER 31, 2006**, REVEALS A CARRYOVER "RETAINED EARNINGS" AMOUNT OF **\$3,750,184** CREATED WHEN EXCESS MEMBERSHIP DUES EACH YEAR WERE NOT RETURNED TO SCA MEMBERS AS REQUIRED BY LAW TO AVOID A 30% IRS TAX ON THE **\$3,750,184** OF APPROXIMATELY **\$1,250,000**.

THE BAD NEWS IS THIS:

FEDERAL INCOME TAX LAW REV. RULING 70-604 REQUIRES A MEMBERSHIP MAJORITY VOTE EACH YEAR TO DETERMINE IF HOA MEMBERS WANT A REBATE OR HAVE THEIR EXCESS DUES CREDITED TO NEXT YEARS DUES. BECAUSE THIS WAS NOT DONE, OUR "MANAGEMENT TEAM" OF THE **BOARD, RMI, TREASURERS WEST, DWYER, AND ROSALYN BERMAN, ALONG WITH OUR CPA AND ATTORNEY**, HAVE PROBABLY SUBJECTED SCA TO PAY TO THE IRS AT LEAST **\$1,250,000, PLUS INTEREST AND PENALTIES** BECAUSE THE IRS TREATS THE **\$3,750,184** ON FORM 1120 AS TAXABLE INCOME.

IS THIS REALLY TRUE?

YES. IRS REVENUE RULING 70-64 STRICTLY REQUIRES A VOTE OF THE MEMBERS TO EITHER HAVE ALL EXCESS DUES REBATED, OR CREDITED TO THE FOLLOWING YEAR'S DUES.

EFFECT: SCA HOMEOWNERS WHO PAID THE **\$3,750,184**, REPRESENTING ABOUT **\$500** EACH, WILL SEE ABOUT **\$150** OF THEIR MONEY DISAPPEAR INTO THE UNITED STATES TREASURY.

WHO FAILED US? SCA'S CPA TAX PREPARER, SCA TREASURER'S WEST, DWYER AND ROSALYN BERMAN AS THE "SIGNORS" FOR TAX YEAR FILINGS 2004/05/06, PLUS EVERY

BOARD MEMBER DURING THOSE YEARS, AS WELL RMI, AND POSSIBLY SCA'S ATTORNEY.

IS THERE ANY ESCAPING PAYING THIS TAX.

NO.

WHAT COULD THE "MANAGEMENT" TEAM HAVE DONE TO AVOID THIS?

AN ANNUAL MEMBERSHIP MEETING SHOULD HAVE BEEN CONVENED BY "THE MGT. TEAM" TO ASK THE MEMBERS TO CHOOSE BETWEEN AN "INSTANT" REBATE, OR HAVE THEIR NEXT YEAR'S DUES LOWERED IN THE AMOUNT OF THE EXCESS DUES.

ANOTHER WAY WOULD HAVE BEEN TO FILE AS A HOMEOWNER'S ASSOCIATION ON AN 1120H TAX FORM INSTEAD OF A FOR PROFIT CORPORATION ON AN 1120 TAX FORM.

WAS ANY MEETING OF THE SCA MEMBERS EVER CONVENED FOR THE TAX YEARS 2004-2005-2006?

NO.

HAS THERE BEEN ANY ADOPTION OF IRS 70-604 BY THE BOARD OF DIRECTORS?

YES.

RESOLUTION OF THE BOARD OF DIRECTORS

RE: Excess income applied to following year's assessments and transfers to Reserve Funds

Resolved, that the excess of membership income over membership expenses for the year ended December 31, 2003 shall be applied against the subsequent tax year membership assessments as provided by IRS Revenue ruling 70-604. (Note: Identical Resolutions were adopted for 2004-2005-2006.)

DOESN'T THIS TAKE CARE OF THE PROBLEM?

NO:

IRS REV. RULING 70-604 **REQUIRES THE MEMBER'S TO MAKE THE ELECTION NOT A BOD.**

DID THE BOARD TELL THE IRS THAT SCA MEMBERS HAD "ELECTED" IRS REV. RULING 70-604 TO AVOID PAYING TAXES ON EXCESS DUES COLLECTED?

YES.

THE RETURNS CONTAINED THIS ATTESTATION:

"The Association elects to use the provisions of IRC Revenue Ruling 70-604 for the current tax year.

The members of the Association specifically empower the signor of this return to make this election on their behalf. Thus, current excess membership income will be carried over to the following year's assessments."

Years this attestation appeared on tax filing:

2004 1120 U.S. CORPORATION TAX RETURN FORM 1120 SIGNED BY **FAVIL WEST.**

2005 1120 U.S. CORPORATION TAX RETURN FORM 1120 SIGNED BY **KAY DWYER.**

2006 1120 U.S. CORPORATION TAX RETURN FORM 1120 SIGNED BY **ROSALYN BERMAN.**

AND SCA'S CPA TAX PREPARER, **GARY W. LEIN,** EACH YEAR.

PROBLEM: THIS WAS AN UNTRUE ATTESTATION.

IS IT TOO LATE TO NOW ADOPT A RESOLUTION TO AVOID THE FEDERAL TAX LIABILITY?

YES.

WHAT WAS THE RESOLUTION REQUIRED TO BE ADOPTED BY MEMBERS BY THE IRS?

Election Under IRS Ruling 70-604

Excess Income Applied to Following Assessments

WHEREAS the Association is a Nevada corporation organized and existing under the laws of the State of Nevada; and,

WHEREAS, the members desire that the corporation shall act in full accordance with the rulings and regulations of the Internal Revenue Service,

NOW, THEREFORE, the members hereby adopt the following resolution by and on behalf of the Association

*RESOLVED, that any excess of membership income over membership expenses, for the tax year ended (date) shall be applied against the succeeding tax years member assessments, as provided by IRS Rev. 70-604.**

***SOURCE: CASE LAW**

MISSION HEIGHTS HOA INC., PLAINTIFF V. UNITED STATES OF AMERICA, DEFENDANT
CIVIL No 95-650-S (RBB) UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF CALIFORNIA DECIDED 8/26/199 FILED 8/28/1996 CITED 3/07/08 WITH
JUDGMENT FOR THE U.S.

(Hn2) A homeowners association is taxed like any other corporation.... (Hn3) Under federal law homeowners associations can avoid taxation on excess membership income...by strictly following revenue ruling (70-604), refund excess assessments to its members or apply such excess amounts to the members subsequent year's assessments, thereby removing such amounts from income.

THE GOOD NEWS:

1. DIRECTOR BOB FRANK HAS REQUESTED AN AMENDED STATE AUDIT OF SCA FINANCES TO INCLUDE TAX MATTERS.
2. TAX MAY BE FULLY RECOVERED FROM CPA, RMI, ATTORNEY & SCA'S INSURANCE CO.
3. OUR DUES WILL BE LOWERED AS REQUIRED BY LAW
4. FINANCIAL REFORM WILL BE IMPLEMENTED
5. SLUSH FUNDS WILL BE ELIMINATED
6. ACCOUNTABILITY WILL BEGIN

JOHN V. BRIGGS: CANDIDATE FOR THE BOARD OF DIRECTORS

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