

2010

Instructions for Form 1120-H



Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for Homeowners Associations

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

Beginning January 1, 2011, associations must use electronic funds transfers to make all federal tax deposits (such as deposits for employment tax and income tax). Forms 8109 and 8109-B, Federal Tax Coupon, cannot be used after December 31, 2010. See Electronic deposit requirement on page 3.

Photographs of Missing Children

The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in instructions on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Unresolved Tax Issues

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should. The service is free, confidential, tailored to meet your needs, and is available for businesses, as well as individuals.

The association can contact the TAS as follows.

- Call the TAS toll-free line at 1-877-777-4778 or TTY/TDD 1-800-829-4059 to see if the association is eligible for assistance.
- Call or write the association's local taxpayer advocate, whose phone number and address are listed in the local telephone directory and in Pub. 1546, Taxpayer Advocate Service – Your Voice at the IRS.
- File Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), or ask an IRS employee to complete it on the association's behalf.

For more information, go to www.irs.gov/advocate.

How To Get Forms and Publications

Internet. You can access the IRS website 24 hours a day, 7 days a week, at IRS.gov to:

- Download forms, instructions, and publications;
- Order IRS products online;
- Research your tax questions online;
- Search publications online by topic or keyword; and
- Sign up to receive local and national tax news by email.

IRS Tax Products DVD. You can order Pub. 1796, IRS Tax Products DVD, and obtain the following:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax Law frequently asked questions.
- Tax Topics from the IRS telephone response system.
- Internal Revenue Code – Title 26 of the U.S. Code.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.
- Two releases during the tax year.
 - The first release will ship in early January.
 - The final release will ship in early March.

Buy the DVD from National Technical Information Service (NTIS) at www.irs.gov/cdorders for \$30 (no handling fee) or call 1-877-233-6767 toll free to purchase the DVD for \$30 (plus a \$6 handling fee).

By phone and in person. You can order forms and publications by calling 1-800-TAX-FORM (1-800-829-3676). You can also get most forms and publications at your local IRS office.

General Instructions

Purpose of Form

A homeowners association files Form 1120-H as its income tax return to take advantage of certain tax benefits. These benefits, in effect, allow the association to exclude exempt function income (defined later) from its gross income.

Electing To File Form 1120-H

A homeowners association elects to take advantage of the tax benefits provided by section 528 by filing a properly completed Form 1120-H. The election is made separately for each tax year and generally must be made by the due date, including extensions, of the income tax return.

This extension does not extend the time to pay the tax.

Once Form 1120-H is filed, the association cannot revoke its election for that year unless the IRS consents. The association may request IRS consent by filing a ruling request. A user fee must be paid with all ruling requests. For more information on ruling requests, see Rev. Proc. 2011-1, 2011-1 I.R.B. 1.

If the association does not elect to use Form 1120-H, it must file the applicable income tax return, for example, Form 1120, U.S. Corporation Income Tax Return.

A homeowners association should compare its total tax computed on Form 1120-H with its total tax computed on Form 1120. The association may file the form that results in the lowest tax.

Automatic 12-month extension to make election. If the homeowners association fails to make the regulatory election to be treated as a homeowners association, it can get an automatic 12-month extension to make the section 528 election, provided corrective action is taken within 12 months of the due date (including extension) of the return. See Regulations section 301.9100-2 for more information.

Tax rate. The taxable income of a homeowners association that files its tax return on Form 1120-H is taxed at a flat rate of 30% for condominium management associations and residential real estate associations. The tax rate for timeshare associations is 32%. These rates apply to both ordinary income and capital gains.

If the association is tax exempt under section 501(a), do not file Form 1120-H. See section 6033 and related regulations. If the association loses its exempt status, see Regulations section 1.528-8(e).

Definitions

Homeowners association. There are three types of homeowners associations.

1. A condominium management association organized and operated to acquire, build, manage, maintain, and care for the property in a condominium project substantially all of whose units are homes for individuals.

2. A residential real estate management association organized and operated to acquire, build, manage, maintain, and care for a subdivision, development, or similar area substantially all of whose lots or buildings are homes for individuals.

3. A timeshare association (other than a condominium management association) organized and operated to acquire, build, manage, maintain, and care for the property that has members who hold a timeshare right to use, or a timeshare ownership interest in, real property of the timeshare association. A timeshare association cannot be a condominium management association.

See Regulations section 1.528-4 for information regarding the “substantially all” test for condominium management associations and residential real estate management associations.

To qualify as a homeowners association, the following must apply.

- At least 60% of the association’s gross income for the tax year must consist of exempt function income (defined later).
- At least 90% of the association’s expenses for the tax year must consist of expenses to acquire, build, manage, maintain, or care for its property, and, in the case of a timeshare association, for activities provided to, or on behalf of, members of the timeshare association.
- No private shareholder or individual can profit from the association’s net earnings except by acquiring, building, managing, or caring for association property or by a rebate of excess membership dues, fees, or assessments.
- The association must file Form 1120-H to elect under section 528 to be treated as a homeowners association.

Association property. Association property includes real and personal property that:

1. The association holds,
2. The association’s members hold in common,
3. The association’s members hold privately within the association, and
4. Is owned by a governmental unit and is used to benefit the unit’s residents.

Timeshare association property includes property related to the timeshare project that the association or its

members have rights to use. These rights must arise out of recorded easements, covenants, or other recorded instruments.

For more information, see Regulations section 1.528-3.

Taxable income. Taxable income is the excess, if any, of:

1. Gross income for the tax year, excluding exempt function income, over
2. Allowed deductions directly connected with producing any gross income except exempt function income. Allowed deductions include a specific \$100 deduction. The following are not allowed:

- Net operating loss deduction (section 172).
- Deductions under part VIII of subchapter B (special deductions for corporations).

If facilities are used (or personnel are employed) for both exempt and nonexempt purposes, see Regulations section 1.528-10.

Exempt function income. Exempt function income consists of membership dues, fees, or assessments from (a) owners of condominium housing units, (b) owners of real property in the case of a residential real estate management association, or (c) owners of timeshare rights to use, or timeshare ownership interests in, real property in the case of a timeshare association. This income must come from the members as owners, not as customers, of the association’s services.

Assessments or fees for a common activity qualify but charges for providing services do not qualify.

Examples. In general, exempt function income includes assessments made to:

1. Pay principal, interest, and real estate taxes on association property.
2. Maintain association property.
3. Clear snow from public areas and remove trash.

Income that is not exempt function income includes:

1. Amounts that are not includible in the organization’s gross income other than under section 528 (for example, tax-exempt interest).
2. Payments from nonmembers.
3. Payments from members for special use of the organization’s facilities, apart from the use generally available to all members.
4. Interest on amounts in a sinking fund.
5. Payments for work done on nonassociation property.
6. Members’ payments for transportation.

For more information, see Regulations section 1.528-9.

When To File

Generally, an association must file Form 1120-H by the 15th day of the 3rd month after the end of its tax year.

If the due date falls on a Saturday, Sunday, or legal holiday, the association may file on the next business day.

Private delivery services. You can use certain private delivery services designated by the IRS to meet the “timely mailing as timely filing/paying” rule for tax returns and payments. See the instructions for Form 1120 for details.

Extension. File Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns, to request a 6-month extension of time to file.



If the association elects to file Form 1120-H, it should file for extension on Form 7004 using the original form type assigned to the entity.

Who Must Sign

The return must be signed and dated by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other association officer (such as tax officer) authorized to sign.

If a return is filed on behalf of an association by a receiver, trustee, or assignee, the fiduciary must sign the return, instead of the association officer. Returns and forms signed by a receiver or trustee in bankruptcy on behalf of an association must be accompanied by a copy of the order or instructions of the court authorizing signing of the return or form.

If an association officer completes Form 1120-H, the paid preparer space should remain blank. Anyone who prepares Form 1120-H but does not charge the association should not complete that section. Generally, anyone who is paid to prepare the return must sign it and fill in the “Paid Preparer Use Only” area.

The paid preparer must complete the required preparer information and:

- Sign the return in the space provided for the preparer’s signature.
- Give a copy of the return to the taxpayer.

Note. A paid preparer may sign original or amended returns by rubber stamp, mechanical device, or computer software program.

Where To File

File the association's return at the address listed below.

If the association's principal business, office, or agency is located in:	Use the following address:
Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin	Department of the Treasury Internal Revenue Service Center Cincinnati, OH 45999-0012
Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming	Department of the Treasury Internal Revenue Service Center Ogden, UT 84201-0012
A foreign country or U.S. possession	Internal Revenue Service Center P.O. Box 409101 Ogden, UT 84409

Paid Preparer Authorization

If the association wants to allow the IRS to discuss its 2010 tax return with the paid preparer who signed it, check the "Yes" box in the signature area of the return. This authorization applies only to the individual whose signature appears in the "Paid Preparer Use Only" section of the return. It does not apply to the firm, if any, shown in that section.

If the "Yes" box is checked, the association is authorizing the IRS to call the paid preparer to answer any questions that may arise during the processing of its return. The association is also authorizing the paid preparer to:

- Give the IRS any information that is missing from the return,
- Call the IRS for information about the processing of the return or the status of any related refund or payment(s), and
- Respond to certain IRS notices about math errors, offsets, and return preparation.

The association is not authorizing the paid preparer to receive any refund check, bind the association to anything

(including any additional tax liability), or otherwise represent the association before the IRS.

The authorization will automatically end no later than the due date (excluding extensions) for filing the association's 2011 tax return. If the association wants to expand the paid preparer's authorization, see Pub. 947, Practice Before the IRS and Power of Attorney.

Other Forms and Statements That May Be Required

See the Instructions for Form 1120 and Pub. 542, Corporations, for a list of other forms and statements the association may be required to file.

Assembling the Return

Attach Form 4136, Credit for Federal Tax Paid on Fuels, to Form 1120-H. Attach schedules in alphabetical order and additional forms in numerical order after Form 4136.

Complete every applicable entry space on Form 1120-H. Do not write "See Attached" instead of completing the entry spaces. If more space is needed on the forms or schedules, attach separate sheets using the same size and format as the printed forms. If there are supporting statements and attachments, arrange them in the same order as the schedules or forms they support and attach them last. Show the totals on the printed forms. Enter the association's name and EIN on each supporting statement or attachment.

Accounting Methods

Figure taxable income using the method of accounting regularly used in keeping the association's books and records. In all cases, the method used must clearly show taxable income. Permissible methods include cash, accrual, or any other method authorized by the Internal Revenue Code.

Change in accounting method. To change its method of accounting used to report taxable income (for income as a whole or for the treatment of any material item) the association generally must file Form 3115, Application for Change in Accounting Method. For more information, see Form 3115 and Pub. 538, Accounting Periods and Methods.

There are some instances when the association can obtain automatic consent from the IRS to change to certain accounting methods. See Rev. Proc. 2008-52, 2008-36 I.R.B. 587, as amplified, clarified, and modified by Rev. Proc. 2009-39, 2009-38 I.R.B. 371. Also, see the Instructions for Form 3115.

Note. If the association is filing an application for a change in accounting method filed on or after January 10, 2011, for a year of change ending on or after April 30, 2010, see Rev. Proc. 2011-14, 2011-4 I.R.B. 330.

Change of Tax Year

Generally, an association must get the consent of the IRS before changing its tax year by filing Form 1128, Application To Adopt, Change, or Retain a Tax Year. However, under certain conditions, an association can change its tax year without getting the consent.

For more information on change of tax year, see the Instructions for Form 1128 and Pub. 538.

Rounding Off to Whole Dollars

The association can round off cents to whole dollars on its return and schedules. If the association does round to whole dollars, it must round all amounts. To round, drop amounts under 50 cents and increase amounts from 50 to 99 cents to the next dollar (for example, \$1.39 becomes \$1 and \$2.50 becomes \$3).

If two or more amounts must be added to figure the amount to enter on a line, include cents when adding the amounts and round off only the total.

Payment of Tax (Line 24)

The association must pay any tax due in full no later than the 15th day of the 3rd month after the end of the tax year. **Do not** include the payment with the tax return.

Electronic deposit requirement.

Beginning January 1, 2011, associations must use electronic funds transfers to make all federal tax deposits (such as deposits of employment, excise, and income tax). Forms 8109 and 8109-B, Federal Tax Coupon, cannot be used after December 31, 2010. Generally, electronic funds transfers are made using the Electronic Federal Tax Payment System (EFTPS). However, if the association does not want to use EFTPS, it can arrange for its tax professional, financial institution, payroll service, or other trusted third party to make deposits on its behalf. Also, it may arrange for its financial institution to initiate a same-day tax wire payment (discussed below) on its behalf. EFTPS is a free service provided by the Department of the Treasury. Services provided by a tax professional, financial institution, payroll service, or other third party may have a fee.

To get more information about EFTPS or to enroll in EFTPS, visit www.eftps.gov, or call 1-800-555-4477. Additional information about EFTPS is also available in Pub. 966, The Secure Way to Pay Your Federal Taxes.

Depositing on time. For deposits made by EFTPS to be on time, the corporation must initiate the deposit by 8 p.m. Eastern time the day before the date the deposit is due. If the corporation uses a third party to make deposits on its behalf, they may have different cutoff times.

Same-day wire payment option. If the association fails to initiate a deposit

transaction on EFTPS by 8 p.m. Eastern time the day before the date a deposit is due, it can still make the deposit on time by using the Federal Tax Application (FTA). Before using the same-day wire payment option, the association will need to make arrangements with its financial institution ahead of time. Please check with the financial institution regarding availability, deadlines, and costs. To learn more about making a same-day wire payment and download the Same-Day Wire Worksheet, visit www.eftps.gov.

Estimated Tax and Alternative Minimum Tax

These items do not apply to homeowners associations electing to file Form 1120-H. However, a homeowners association that does not elect to file Form 1120-H may be required to make payments of estimated tax. Because the election is not made until the return is filed, Form 1120-H provides lines for estimated tax payments and the crediting of overpayments against tax if estimated tax payments or overpayments apply.

Interest and Penalties

Interest. Interest is charged on taxes paid late even if an extension of time to file is granted. Interest is also charged on penalties imposed for failure to file, negligence, fraud, substantial valuation misstatements, substantial understatements of tax, and reportable transaction understatements from the due date (including extensions) to the date of payment. The interest charge is figured at a rate determined under section 6621.

Late filing of return. In addition to losing the right to elect to file Form 1120-H, a homeowners association that does not file its tax return by the due date, including extensions, may be penalized 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a return that is over 60 days late is the smaller of the tax due or \$135. The penalty will not be imposed if the association can show that the failure to file on time was due to reasonable cause. Associations that file late should attach a statement explaining the reasonable cause.

Late payment of tax. An association that does not pay the tax when due generally may be penalized 1/2 of 1% of the unpaid tax for each month or part of a month the tax is not paid, up to a maximum of 25% of the unpaid tax. The penalty will not be imposed if the association can show that the failure to pay on time was due to reasonable cause.

Other penalties. Other penalties can be imposed for negligence, substantial understatement of tax, reportable transaction understatements, and fraud. See sections 6662, 6662A, and 6663.

Specific Instructions

Period covered. File the 2010 return for calendar year 2010, and fiscal years that begin in 2010 and end in 2011. For a fiscal or short tax year return, fill in the tax year space at the top of the form.

The 2010 Form 1120-H can also be used if (a) the association has a tax year of less than 12 months that begins and ends in 2011 and (b) the 2011 Form 1120-H is not available at the time the association is required to file its return.

The association must show its 2011 tax year on the 2010 Form 1120-H and take into account any tax law changes that are effective for tax years beginning after December 31, 2010.

Name and address. Enter the association's true name (as set forth in the charter or other legal document creating it), address, and EIN on the appropriate lines. Include the suite, room, or other unit number after the street address. If the post office does not deliver mail to the street address and the association has a P.O. box, show the box number instead.

If the association receives its mail in care of a third party (such as an accountant or an attorney), enter on the street address line "C/O" followed by the third party's name and street address or P.O. box.

Employer identification number (EIN). Enter the association's EIN. If the association does not have an EIN, it must apply for one. An EIN may be applied for:

- Online—Click on the EIN link at www.irs.gov/businesses/small. The EIN is issued immediately once the application information is validated.

- By telephone at 1-800-829-4933 on Monday through Friday from 7:00 a.m. to 10:00 p.m. in the association's local time zone.

- By mailing or faxing Form SS-4, Application for Employer Identification Number.

If the association has not received its EIN by the time the return is due, enter "Applied for" and the date you applied in the space for the EIN. For more details, see the Instructions for Form SS-4.

Note. Only associations located in the United States or U.S. possessions can use the online process.

Final return, name change, address change, or amended return.

- If the association ceases to exist, file Form 1120-H and check the "Final return" box.

- If the association changed its name since it last filed a return, check the box for "Name change."

- If the association has changed its address since it last filed a return (including a change to an "in care of" address), check the box for "Address change."

- To amend a previously filed Form 1120-H, file a corrected Form 1120-H and check the "Amended return" box.

Note. If a change in address occurs after the return is filed, use Form 8822, Change of Address, to notify the IRS of the new address.

Item A. Type of homeowners association. See *Definitions* on page 2.

Item B. 60% gross income test. At least 60% of the association's gross income for the tax year must consist of exempt function income. See *Exempt function income* on page 2.

Item C. 90% expenditure test. At least 90% of the association's expenditures for the tax year must consist of expenses to acquire, build, manage, maintain, and care for property, and in the case of a timeshare association, for activities provided to, or on behalf of, members of the timeshare association. Include current and capital expenditures. Use the association's accounting method to figure the total.

Include:

1. Salary for an association manager or secretary.
2. Expenses for gardening, paving, street signs, security guards, and property taxes assessed on association property.
3. Current operating and capital expenditures for tennis courts, swimming pools, recreation halls, etc.
4. Replacement costs for common buildings, heating, air conditioning, elevators, etc.

Do not include expenditures for property that is not association property. Also, do not include investments or transfers of funds held to meet future costs. An example would be transfers to a sinking fund to replace a roof, even if the roof is association property.

Item D. Enter the association's total expenditures for the tax year including those expenditures directly related to exempt function income. Use the association's accounting method to figure the entry for item D.

Item E. Show any tax-exempt interest received or accrued. Include any exempt-interest dividend received as a shareholder in a mutual fund or other regulated investment company.

Line 15. Other deductions. Expenses, depreciation, and similar items must not only qualify as items of deduction, but must also be directly connected with the production of gross income to be deductible in computing the unrelated taxable income.

Line 21. Tax credits. The association may qualify for the following tax credits:

- Foreign tax credit (Form 1118).
- Qualified electric vehicle credit (Form 8834).
- General business credit (Form 3800).

Note. Homeowners associations cannot claim the investment credit.

Enter the total applicable credits on line 21 and attach the appropriate form(s).

Line 22. Total tax. If the association must recapture any low-income housing

credit, qualified electric vehicle credit, or new markets credit, include the amount of the recapture in the total for line 22. To the right of the entry space, write "LIHTC," "QEV," or "NMTC," "recapture," and the amount. For details, see Form 8611, Recapture of Low-Income Housing Credit; Regulations section 1.30-1 (regarding the qualified electric vehicle credit); or Form 8874, New Markets Credit.

Line 23g. Total payments. Add the amounts on lines 23c through 23f and enter the total on line 23g.

Refundable credit from Form 3800. A homeowners association can elect to claim an additional research tax credit instead of claiming any additional first-year special depreciation allowance for eligible qualified property or eligible extension property. If the association makes the election, include the amount from line 19c of Form 3800 in the total for line 23g. Enter "Refundable credit from Form 3800" next to the entry space for line 23g.

Backup withholding. If the association had income tax withheld from any payments it received because, for

example, it failed to give the payer its correct EIN, include the amount withheld in the total for line 23g. This type of withholding is called backup withholding. Show the amount withheld in the blank space in the right-hand column between lines 22 and 23g, and write "Backup Withholding."

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	11 hr., 57 min.
Learning about the law or the form	5 hr., 19 min.
Preparing the form	13 hr., 12 min.
Copying, assembling, and sending the form to the IRS	2 hr., 9 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this office. Instead, see *Where To File* on page 3.