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Tuesday, 05 November 2013 20:29

## Timing of the Revenue Ruling 70-604 Election

Written by [Gary Porter](#)

It's getting to be that time of year again when associations are thinking about year-end procedures, one of which is making the annual election under Revenue Ruling 70-604.

I have been asked a number of times what those numbers mean. "70" signifies the year in which the ruling was issued (1970), and "604" simply represents the numerical sequence of the ruling for that year. This was ruling number 604 issued in 1970.

As a CPA, I receive more questions about the application of Revenue Ruling 70-604 than on all other tax issues combined. Several of my articles on the subject of Revenue Ruling 70-604 are posted in various places on the web, so I routinely get "found" and questions are routed in my direction. One question I receive over and over is "when do we make the election?"

While Revenue Ruling 70-604 is one of our most powerful tax planning tools for associations filing Form 1120, it also is the one most subject to interpretation. One reason for this is that the Ruling itself is so brief - only two paragraphs in length. The absence of internal definitions within the Ruling means that readers have to interpret it and make their own definitions for almost all critical issues within the scope of the Ruling, including the timing of the election.

Because so many areas of this Ruling are subject to interpretation, many years ago I contacted Mr. Ransom (who drafted Revenue Ruling 70-604) at the Internal Revenue Service (IRS) National Office, to discuss this and other matters. When I pointed out the ambiguity in the Ruling with respect to the timing of the election, Mr. Ransom stated that he felt that there was no ambiguity, as the matter was purposely worded so that the Ruling would be flexible. I specifically asked Mr. Ransom if an association could make their election after their fiscal year had ended, and he affirmed that they could. He agreed that the only limitation on the timing of the election is that the election must be made before the tax return is filed, and must be made on a timely filed return.

I also asked Mr. Ransom if it was possible for an association to make an election before the fiscal year had ended. He agreed that it would be possible to make the election in this manner, since the Ruling was purposely drafted to be flexible by stating that "any" excess could be carried over from one year to the subsequent year. That means that one does not have to state a specific amount that would be carried over from one year to the next, nor does one even have to know if there will be any excess.

There is no downside risk to making an election under Revenue Ruling 70-604. If an association does not have an excess of membership income over membership expenses, the election will simply not apply to that year. It would be the same as if no election had been made. If an association files Form 1120-H instead of Form 1120, then no election is needed, so again, the election will simply not apply to that year.

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### **Gary Porter**

Gary Porter, CPA, RS, PRA, has been working in the community association industry for more than 30 years. As a CPA, he has performed thousands of association audits, and prepared thousands of association income tax returns. He has specialized in the preparation of tax exemption applications, and has successfully taken more than 80 associations tax exempt, at a cumulative tax savings of millions of dollars. He is the primary author of PPC's "Guide to Homeowners Associations" and "Homeowners Association Tax Library," which serve as the principal guides used by CPAs within the community association industry.

As a reserve preparer, he has performed hundreds of reserve studies since 1982, and is author of the 1988 book "The Reserve Study Manual."

Mr. Porter is a past national president of CAI, and a member of the Association of Professional Reserve Analysts.

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