



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Number: **201636044**
Release Date: 9/2/2016

Date: June 8, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.04-07

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(4) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: April 12, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

W = Date

X = State

Y = Condominium Name

Z = Law

b = Number

c dollars = Amount

UIL:

501.04-07

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(4) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

1. Do you qualify for exemption under Section 501(c)(4) of the Code? No, for the reasons stated below.

Facts

You were incorporated on W in the State of X. Your Articles of Incorporation state, in pertinent part, the following purposes:

- (a) To manage and administer the affairs of and to maintain Y, a condominium (hereinafter called 'Condominium');
- (b) To levy and collect assessments against and from the members of the corporation and to use the proceeds thereof for the purposes of the corporation;
- (c) To carry insurance and to collect and allocate the proceeds thereof;

- (d) To rebuild improvements after casualty;
- (e) To contract for and employ persons, firms, or corporations to assist in management, operation, maintenance and administration of said Condominium;
- (f) To make and enforce reasonable regulations concerning the use and enjoyment of said Condominium;
- (g) To own, maintain and improve, and to buy, sell, convey, assign, mortgage, or (lease as landlord or tenant) any real and personal property, including, but not limited to, any Unit in the Condominium, any easements or licenses or any other real property, whether or not contiguous to the Condominium, for the purpose of providing benefit to the members at the corporation and in furtherance of any of the purposes of the corporation;
- (h) To borrow money and issue evidences of indebtedness in furtherance of any or all of the objects of its business: to secure the same by mortgage, pledge or other lien;
- (i) To enforce the provisions of the Master Deed and Bylaws of the Condominium and of these Articles of Incorporation and such Bylaws and Rules and Regulations of this corporation as may hereinafter be adopted;
- (j) To do anything required of or permitted to it as administrator of said Condominium by the Master Deed or Bylaws or by Z, as amended; and
- (k) In general, with respect to this Condominium only, to enter into any kind of activity, to make and perform any contract and to exercise all powers necessary, incidental or convenient to the administration, management, maintenance, repair, replacement and operation of said Condominium and to the accomplishment of any of the purposes thereof.

Your Form 1024 shows you are composed of b single family site condominiums. You are solely supported by dues which are in the range of c dollars per unit per year. This pays for insurance on a common area consisting of a retention pond at the cul-de sac, electric for street lights, and any unforeseen expenses, such as damage to the street lights or cleaning of the retention pond. Upon dissolution your assets, if any, will be divided equally among the owners. Finally, Your Master Deed, bylaws and escrow agreement state that you are a condominium project.

Law

Section 501(c)(4) of the Code provides for the exemption from federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare or legal associations of employees, the membership of which is limited to the employees of the designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.

Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations states an organization may be exempt if: (i) it is not operated for profit and (ii) it is operated exclusively for the promoting of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one, which is operated primarily for the purpose of bringing about civic betterments and social improvements.

In Rev. Rul. 74-17; 1974-1 C.B. 130, an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project as defined by state statute with membership assessments paid by the unit owners does not qualify for exemption under Section 501(c)(4) of the Code. Condominium ownership involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners. Since the organization's activities are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare.

In Rev. Rul. 74-99; 1974-1 C.B. 131, a homeowners association, to qualify for exemption under Section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

In Rancho Santa Fe Association v. U.S., 84-2 U.S.T.C. 9756 (S.D. Cal. 1984), the court held that a homeowner's association representing property owners within an independent community was exempt under IRC section 501(c)(4) despite closing certain recreational facilities for use by the general public. It was reasoned even though the association served the community that existed within Rancho Santa Fe and the facilities were only open for use by members, the association still served to promote the common good and general welfare of the people of the requisite of the community. The court also determined that the Rancho Santa Fe development was an independent community within the meaning of the statute as it was significant in size and self-contained in orientation. The court reasoned that Rancho Santa Fe was not the ordinary residential grouping of tract homes but was an independent community separated geographically from the city of San Diego of which Rancho Santa Fe was a sub-part.

In Flat Top Lake Ass'n v. United States, 9180 (1989 4th Circuit) the Court held that a homeowners association did not qualify for exemption under Section 501(c)(4) of the Code when it did not benefit a "community" bearing a recognizable relationship to a governmental unit and when its common areas or facilities were not for the use and enjoyment of the general public.

Application of law

You are not as described in Section 501(c)(4) of the Code and Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations because your activities do not primarily promote civic betterment or social welfare; you are primarily operating for the benefit of your members. You are limiting your services to your member condominium owners. You are maintaining the common areas for your condominium owners by providing property insurance on the retention pond, and other services to the common areas. In addition, your net assets

upon dissolution will be divided equally among your members. These facts illustrate you are serving the private interests of the member owners, not the people of a community.

Moreover, you do not meet the provisions of Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations because your activities are focused on providing services and amenities to member owners and do not primarily promote civic betterment or social welfare.

You are nearly identical to the organization that was denied exemption in Rev. Rul. 74-17. Like this organization, you are a condominium housing project as defined by state statute. You have b unit owner members who pay dues and assessments which are used to provide for the maintenance of common areas. Like the organization in the revenue ruling, because your activities are directed for the benefit of members, you are not operated primarily for the promotion of social welfare.

Contrary to Revenue Ruling 74-99, you do not serve a community that resembles an area that could reasonably be identified as governmental because you are a condominium association of only b owners. In addition, your activities of purchasing insurance, paying for electric and maintaining a retention pond cannot be considered maintaining common areas for the use and enjoyment of the general public.

You are not like the organization described in the court case Rancho Santa Fe Association v. U.S. You are a condominium association with b members; therefore you are not a community within the meaning of the statute.

Like the organization in the court case Flat Top Lake Ass'n v. United States, you do not serve a community which bears a reasonable recognizable relationship to an area ordinarily identified as governmental. Rather, the persons you serve are b owners of condominiums. Furthermore, your common areas are not for the use and enjoyment of the general public. Therefore, you are not primarily operating for the promotion of social welfare

Conclusion

Because you operate primarily for the benefit of your members and not for the social welfare or common good of the community in general, you do not qualify for exemption under Section 501(c)(4) of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative

- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892