



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

Date: May 26, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: **201733017**
Release Date: 8/18/2017

UIL: 501.33-00, 501.35-00

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) 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.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. 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.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



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

Date:
March 23, 2017
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = date
C = business
D = individual
E = individual
F = individual
G = state
H = county

UIL:
501.33-00
501.35-00

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)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under Section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

You incorporated under the Business Organizations Code of G on B. Your specific purpose, as stated in Article II of your Articles of Incorporation, is "to provide for maintenance, preservation, and architectural control of the residential lots located within that certain subdivided tract of real property located in H, G (the "Subdivision").

When you, the homeowners association (HOA), were first set-up C owned all four homes. C also paid for and caused your formation. Currently, C owns two of these four homes, and is therefore two of your four members. You did not state who owned the other two properties. Your only activity is to maintain/repair a rock gravel road that the four members (homeowners) share as needed.

C is equally owned by D and E, who are married. F is the father of D, and is also a lender to C. D, E and F are your three board members.

You are funded each month by the homeowners' membership dues. Your expenses are for maintaining the rock gravel road.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious, scientific, or educational purposes, where no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that, in order for an organization to be exempt under Section 501(c)(3) of the Code, it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv) states that in no case shall an organization be considered to be organized exclusively for one, or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in Section 501(c)(3).

Treas. Reg. Section 1.501(c)(3)-1(b)(4) states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal Government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized and operated exclusively for charitable purposes unless it serves a public rather than a private interest. To meet this requirement that it serve a public purpose, an organization must establish that it is not organized or operated for the benefit of private interests.

Revenue Ruling 69-175, 1969-1 C.B.149 describes an organization which was formed by parents of pupils attending a private school. The organization provided bus transportation to and from the school for those children whose parents belong to the organization. The organization did not qualify for exemption under Section 501(c)(3) of the Code because it served a private rather than public interest.

Revenue Ruling 70-186, 1970-1 C.B. 128 held that a nonprofit organization formed to preserve and improve a lake used extensively as a public recreational facility qualifies for exemption under Section 501(c)(3) of the Code.

Revenue Ruling 75-286, 1975-2 C.B. 210 held that a nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefitting the community as a whole as well as enhancing members' property rights, will not qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 78-85, 1978-1 C.B. 150 held that a nonprofit organization with membership open to the general public that was formed by residents of a city to help preserve, beautify, and maintain a public park located in the city and whose support is derived from membership dues and contributions from the general public is operated exclusively for charitable purposes and qualifies for exemption under Section 501(c)(3) of the Code.

In Benedict Ginsberg and Adele W. Ginsberg v. Commissioner, 46 T.C. 47 (1966), exemption was retroactively revoked from a corporation organized to conduct the dredging of certain waterways. It was held that the corporation was organized and operated primarily for the benefit of those persons owning property adjacent to the waterways dredged rather than for public or charitable purposes.

Application of law

You are not described under Section 501(c)(3) of the Code or Treasury Regulation Section 1.501(c)(3)-1(a)(1) because you do not meet the organizational or operational tests.

To demonstrate it is organized exclusively for exempt purposes, thus satisfying the organizational test, an organization must have a valid purpose clause (Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv)). Your Articles of Incorporation state your purpose is to provide for the maintenance, preservation, and architectural control of the residential lots located within that certain subdivided tract of real property located in H. This does not further charitable or educational purposes as described under Section 501(c)(3) of the Code or corresponding regulations. Therefore, you do not meet the organizational test.

Your Articles of incorporation states upon dissolution, other than incident to a merger or consolidation, your assets shall be dedicated to an appropriate public agency to be used for purposes similar to those for which you were created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, corporation, trust or other organization to be devoted to such similar purposes. This dissolution clause does not properly limit your assets as dedicated for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(b)(4). Therefore, you do not meet the organizational test.

You are not organized and operated exclusively for any exempt purpose. Your activities of maintaining the gravel road shared by members and collecting monthly fees from them to cover common costs provides direct benefits to these individuals that are more than insubstantial in nature. For this reason, you are not operating exclusively for exempt purposes as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). As a result, you do not satisfy the operational test requirements to be recognized as exempt under Section 501(c)(3) of the Code. This precludes you from exemption under Section 501(c)(3).

You are similar to the organization in Revenue Ruling 69-175 in that you were formed to provide benefits to your members. Your activity is to provide regular maintenance to the road that leads to your members' homes and collect monthly fees for your operation. Maintaining a road that would otherwise have to be maintained by your individual members serves private interests. Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

You are dissimilar to the organizations described in Revenue Rulings 70-186 and 78-85 in the sense that you are not engaged in preserving or maintaining public property. You are similar to the organizations described in Revenue Ruling 75-286 and in Benedict Ginsberg and Adele W. Ginsberg in that your activities, i.e. providing

road maintenance for your four members, serve private rather than public interests. Your activity is not useful and beneficial to the general public as a whole.

Conclusion

Based on the above facts and analysis, you are not operated exclusively for purposes described in Section 501(c)(3) of the Code because you further the private interests of your members and do not conduct an activity that is either charitable or educational. In addition, you fail to meet the organizational test as required under Section 501(c)(3).

Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170 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