



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

Date: November 7, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: **201805014**
Release Date: 2/2/2018

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,

Stephen A. Martin
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: September 11, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

U = State

V = Date

W = Number

X = Date

Y = Law

UIL:

501.04-07

b dollars = Amount

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

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

Facts

You incorporated in the State of U on V. The purpose in your Articles of Incorporation is the "administration and operation of property owned by the homeowner's association as well as maintenance of townhomes owned by members of the homeowner's association". Your assets upon dissolution would be divided equally among the members.

There are W units. Ownership of one of the W units in the townhome development is the only qualification for membership and there is one membership per unit. The membership automatically terminates upon the sale, transfer, or other disposition of the title interest of the unit. The W members pay dues currently of b dollars per quarter.

You conduct landscape, exterior surface sealing program application and snow removal services for members, as well as roof replacement. You submitted a Declaration of Covenants, Conditions, and Restrictions, which states in part:

- Article 3.1 states that you are the governing organization, in charge of the maintenance, repair, replacement, administration, and operation of the common areas and the exterior of the townhouse buildings. You may levy and collect assessments to provide the funds for such purposes.
- Article 3.2 indicates each owner and the members of his or her family and his or her authorized guests, invitees and visitors shall have the right and easement of ingress and egress and enjoyment in and to the Common Areas and the amenities thereon.
- Article 3.4 states that you “shall be considered a “Common Interest Community Association” as defined by state law specifically Y.
- Article 6 explains the Covenant for Maintenance Assessments and indicates that unit owners by accepting the deeds to their property agree to pay you all annual and special assessments for such items as the exterior maintenance of the residential buildings, landscaping, insurance premiums, real estate taxes, any special assessments or other special taxes, and necessary reserves for contingencies and replacements.
- Article 8 explains the specific use of all common areas. Each unit owner has the right and easement of ingress and egress in, the rough, over, and across the common areas and any recreational facilities located on your property. You also have the right to limit the number of guests of the unit owners.

Furthermore, you have the right to suspend the voting rights and the right of each delinquent owner to have access to common areas. Moreover, you have the right to suspend the right of any unit owner to use any recreational facilities located on the common areas for up to several days for any infractions of your published rules and regulations.

You have been filing Form 1120-H, as a homeowner’s association exempt under Section 528 of the Internal Revenue Code, annually since X when you began earning interest on your money market account and certificate of deposits.

Law

Section 501(c)(4) of the Internal Revenue 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.

Treasury Regulation Section 1.501(c)(4)-1(a)(1) 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.

Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i) 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.

Rev. Rul. 69-280, 1969-1 CB 152 describes an organization formed to provide maintenance of exterior walls and roofs of homes of members who owned houses in a development. It was held that the organization was operated primarily for the private benefit of members and not operated primarily for the common good and general welfare of the people of the community. The services provided to members included maintenance of the exterior walls and roofs of the individual units. If a person purchases a unit in the housing development, he is required to become a member of the organization. The organization is supported entirely by annual dues

charged members. The dues are based on the estimated expenses of the organization plus an amount for reserves to cover large expenditures, such as replacement of roofs.

Rev. Rul. 74-17, 1974-1 C.B. 130 describes 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 with membership assessments paid by the unit owners that did not qualify for exemption under Section 501(c)(4) of the Code. Condominium ownership involved ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constituted the provision of private benefits for the unit owners. Since the organization's activities were for the private benefit of its members, it could not be said to be operated exclusively for the promotion of social welfare.

In Rev. Rul. 74-99, 1974-1 C.B. 131, it is explained that a homeowner's 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.

Application of Law

You are not as described in Section 501(c)(4) of the Code and Treas. Reg. Section 1.501(c)(4)-1(a)(1) 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 W member owners. 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 W member owners, not the people of a community.

Moreover, you do not meet the provisions of Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i) because your activities are focused on providing services and amenities to member owners and do not primarily promote civic betterment or social welfare. In addition, only members and their guests have rights of ingress and egress to your common areas and recreational facilities. Because you are limiting access to the common areas, you are operating primarily for the private benefit of members.

You are like the organization described in Rev. Rule 69-280. You were formed to provide maintenance of individual townhome units including roof maintenance and replacement. Owners in your development are required to become members and you charge member/owners dues and assessments based on your estimated expenses plus an amount for reserves to cover large expenditures. Similarly, you are primarily operated for the private benefit of members and any benefits to the community are not sufficient to meet the requirement you are being operated primarily for the common good and general welfare of the people of the community and therefore you are not exempt under Section 501(c)(4) of the Code.

You are similar to the organization that was denied exemption in Rev. Rul. 74-17. You have W unit owner members who pay quarterly dues of b dollars and assessments for larger expenditures which are used to provide for the exterior maintenance of the townhomes and your common areas that are not opened to the community. Because your activities are directed for the benefit of the W member owners 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 W owners defined by state law. In addition, your activities of roof replacement and exterior maintenance for the members' townhomes

benefit the owners. You also limit access to the common areas which you maintain to owners and guests. These activities cannot be considered maintaining common areas for the use and enjoyment of the general public.

Protest Position

You provided a copy of an amendment to Article 13 of The Declaration of Covenants. Article 13.2 of this amendment lists your responsibilities and state that they will be financed through quarterly assessments, reserves, or special assessments. Your responsibilities are:

- Painting, staining, and weather proofing external surfaces including all utility meters
- EIFS (Exterior Insulated Finish Systems) inspections and routine maintenance
- All exterior caulking maintenance
- Sprinkler system maintenance and repairs
- All lawn care, landscaping, and tree shrub replacement and trimming
- Roof replacement but not maintenance or repairs.
- Driveway and walkway paver maintenance repairs, and replacement
- Snow removal
- All fire alarm systems maintenance, repairs, and replacement
- Water and electric service for the common areas
- Liability insurance
- Fence maintenance, repairs, and replacement

Article 13.3 of your amended Declaration provides that the townhome owners responsibilities consist of:

- All roof repairs other than full replacement
- All deck and patio cleaning, repairs, and replacement including steps, railings, concrete slabs, footings, and rock under the deck.
- Gutter and downspout replacements and repairs
- EIFS (Exterior Insulated Finish Systems) repairs and replacements
- Fascia maintenance, repairs, and replacements
- All window maintenance, repairs, and replacements
- Chimney cleaning, repairs, and tuckpointing
- All door maintenance, repairs, and replacements
- Mailbox maintenance, repairs, and replacements
- Front and back stoop maintenance, repairs, and replacement
- All vents (roof and chimney) maintenance, repairs, and replacements
- All exterior sewer and water pipes and their connection to the main line
- All garage light fixtures, repairs, and replacement
- HVAC and Water heating systems
- Concrete sidewalk maintenance, repair, and replacement

You also indicated the following:

- You are a nonprofit common interest community organization of town homes.
- Each home is owned by its owner, which includes full responsibility for exterior and interior maintenance. This includes the roof over their townhome and individual home owner's insurance which includes the roof.

- You have a community reserve fund which is being used to replace the roofs.
- Your assets only consist of the community reserve fund which is contained in CD's; as all roofs are replaced over time, which is now in process, this will be depleted. Minimal interest is paid which is the sole reason you have requested exemption. The land on which the town homes rest would never be divided equally as it is in violation of the architectural intention of your community.
- You also provide EIFS inspections and routine maintenance. You do this because of the common nature of multiple units along with the need to sustain civic betterment.
- You promote civic and social betterment because you have chosen to have your central alarm system monitored by the city although you had a choice of any number of fire alarm services. While the city requires a central fire alarm system, it does not require use of its fire alarm service.
- You have also been an active community contributor because you have participated in development projects within the broader community. For example, you have participated in city hearings, and discussions on behalf of civic betterment including community rezoning issues, and road access debates.

Your members volunteer their services. Most of your membership fees are used to maintain the outside areas. You are not a gated community, and the public has access to and frequents your community area. You stated that all organizations for civic betterment and social welfare have membership or they could not exist. You further explained that membership provides support, almost always by fees collected or donated to fund their domicile and in your case, the outside grounds take most your operating budget. You have no recreational facilities.

Finally, you wrote that your members frequent your community more than guests so you have set guidelines for the guests to follow in the form of your rules and regulations. Further, membership is part of your ability to apply these guidelines for civic betterment. You stated that you were not sure why the issue of membership was raised as an issue.

Our Response to Your Protest Position

Roof replacement and inspections and general maintenance of the town home exterior building is considered a private interest to the townhome owners, and is considered disqualifying. You were formed to provide maintenance of individual townhome units including roof replacement. Owners in your development are required to become members and you charge member/owners dues and assessments based on your estimated expenses plus an amount for reserves to cover large expenditures. Similarly, you are primarily operated for the private benefit of members and any benefits to the community are not sufficient to meet the requirement you are being operated primarily for the common good and general welfare of the people of the community and therefore you are not exempt under Section 501(c)(4) of the Code.

Conclusion

Because you operate primarily for the benefit of your members and not for the social welfare or the 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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892