



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201832014**
Release Date: 8/10/2018
UIL Code: 501.04-07

Date:
May 15, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

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:
March 12, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

X = State

Y = Date

z = Number of member households

UIL: 501.04-01

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 were formed in X on Y as a non-profit unincorporated association for the purpose of collecting annual fees to pay expenses related to a well and a boat dock owned by your members, numbering z households. Each homeowner obtaining water from the well is required to be a member and does not have the right to terminate membership. You do not own the well and dock. The well and the dock are owned in common by the members. Whenever ownership of a home changes hands, the ownership interest in the well and dock automatically transfers to the new owner.

Your expenses include electricity used at the well and dock, real estate taxes and personal property tax, and, formerly, expenses related to a water softening system. You restrict use of the well, dock and associated land to members.

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.

Treas. Reg Section 1.501(c)(4)-1(a)(2)(i) states 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. 74-17, 1974-1 C.B. 130 describes a condominium owner's association that maintains areas owned by the unit holders does not qualify for exemption under IRC 501(c)(4) since such an organization primarily serves private interests. The common areas of the condominium property are owned by the unit owners as tenants in common, in equal shares, one for each unit. The maintenance and care of the common areas necessarily constitutes the provision of private benefits for the unit owners.

Rev. Rul. 74-99, 1974-1 C.B. 132, provides that 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.

Rev. Rul. 80-63, 1980-1 C.B. 116, Question 2, clarifying Rev. Rule. 74-99, held that if a homeowners' association does not serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, the use and enjoyment of the common areas owned and maintained by the association must be extended to the general public, as distinguished from controlled use or access restricted to members, for the association to qualify for exemption under section 501(c)(4) of the Code.

Application of law

You are not operated for the promotion of social welfare under Section 501(c)(4) as described in Treas. Reg Section 1.501(c)(4)-1(a)(2)(i) because you are not primarily engaged in promoting in some way the common good and general welfare of the people of the community.

You do not own and maintain the well and the dock for the use of the general public in the manner described in Revenue Ruling 74-99 and in Revenue Ruling 80-63, but you maintain them solely for the benefit of the members of the association. This benefit is not even indirect, since you are not the owner of the well and dock. Your expenditures benefit the members directly, affecting the value of their ownership interests in the two facilities, just as the maintenance of the common areas of the condominium association described in Rev. Rul. 74-17 necessarily confers private benefit on the unit owners.

Conclusion

You do not qualify for exemption under Section 501(c)(4) of the Code. You are not operated exclusively for the promotion of social welfare and your activities primarily benefit your members.

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