



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Release Number: **201832017**  
Release Date: 8/10/2018  
UIL Code: 501.04-00  
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 8, 2018  
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = State  
C = Commercial development  
D = Officer 1  
E = Officer 2  
F = Property owner 1  
G = Property owner 2  
H = Property owner 3  
J = Property owner 4  
K = Property owner 5  
v percent = Fee percentage  
z = Formation date

**UIL:**

501.04-00  
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**

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

**Facts**

You were incorporated on z, in the State of B. Your Articles of Incorporation state that you were formed "to provide for maintenance, preservation and architectural control of the common areas... within C, a commercial development" and "to promote the needs of the members."

Your members are the owners of record of any lot within the development. All members but the developer of C have one vote each; the developer has five votes per every 1,000 square feet of land it owns. The property currently consists of graded, developable commercial land. All lots within the Project shall be devoted to hospitality, retail, business, commercial, and office uses.

You will maintain, repair, replace, restore, operate, and manage the common area and common maintenance area, including parking areas and driveways, and all facilities, improvements, furnishings, equipment, signage, and landscaping within the common area and the common maintenance area. Within these you will obtain all



gas, electric, and water, refuse collection, landscape and irrigation maintenance service, and other utilities and services. You will preserve architectural control over the common area, and enforce insurance coverage requirements and maintaining regulations governing the appropriate use of the property and its common areas.

“Common area” refers to common roadway areas, which are the areas, streets, or roadways, as well as landscape berms, setbacks, sidewalks, and storm drains within C. “Common maintenance area” refers to any area of any lot other than buildings. Each owner grants the right of entry into the common area for pedestrian and vehicular ingress and egress, and vehicular parking. Owners are permitted to locate signs in the common area, as well as to be represented on a monument sign in the common area. You state the common area “shall be held for the non-exclusive use and enjoyment... of all of the Owners and their Related Parties.”

Each owner shall have an undivided ownership interest in the common area upon dedication of the common area, which is allocated based on the lot area of the lot owner’s lot. The allocation of ownership interest in and to the common area is based upon the ratio of the lot area of each owner compared to the total lot area of all lots on the property.

Upon dedication of the common area, it will be owned in common by all the owners of lots and no lot owner may bring action for partition thereof. In other words, you do not own the common area, but the lot owners do. No lot owner may exempt himself or his lot from liability for payment of assessments by waiver of his rights in the common area, common maintenance area, or by abandonment of his lot.

With regard to modifications to the common area, each owner has the right to increase the size of any building on his parcel, modify the configuration of any building on his parcel, and/or construct additional temporary or permanent improvements within the portion of the common area located on his owner’s parcel.

Common expenses are all costs and expenses, related to the operation, repair, replacement, maintenance, and/ or management of the common area, common maintenance area and the project, including, but not limited to the following:

- Water, sewage disposal, sewer-line clean out, drainage, refuse collection and disposal, gas, electricity, and other utility services serving the common area and the common maintenance area;
- Landscaping and irrigation;
- Management fees (not to exceed an amount of v percent of total Common Expenses, if your manager manages the project); and
- Marketing, advertising and promotion expenses.

We asked you to provide map(s) to delineate the areas you own, compared to areas owned by other parties, and map(s) to delineate the areas that you will maintain, repair, replace, restore, landscape, and pave, in order to compare these areas to those owned by private parties. Specifically, the maps would have provided you with an opportunity to disprove that the areas you maintain are owned by private parties, and that you are maintaining the parking lots for commercial properties.

- You did not provide any such maps or description of property delineations, stating that the developer will design the project on a phase-by-phase basis, as demanded by the market. “Accordingly, it is impossible at this organizational stage of the project to provide any delineation of the area, including any final common areas, amenities, landscaping, parking, etc.”
- Throughout the development process, the developer will deed the areas. You state, “Accordingly, it is impossible at this point in the development of the Project for the Developer or [us] to know with any



specificity which land will be deeded to [us].”

- You state you, “believe that the final design of the Developer’s project, including delineation of parking, landscaping, common areas, amenities, and ownership and description of commercial parcels within the Project (which will not be owned by [you]...) is of no concern to the Service, and is not relevant whatsoever to [y]our Application.”

Further, you provided information about ownership and directorship of your organization, as well as relationships with current property owners. Your officers are D, your President, and E, your Secretary. The following for-profit entities are all the current property owners of the development:

- F is the overall project developer, a property owner, and potential business owner within the project. It is managed by D and E.
- G is a property owner, business owner, and the developer of a named hospitality chain project under construction on the property. It is managed by D and E.
- H is a property owner, but not a business owner. It anticipates the future development of a yet un-named hospitality business its land. It is managed by D and E.
- J is a property owner, but not business owner. E is its manager. The land it owns will become part of the land owned by F upon the exercise of a contractual option.
- K is a business owner, and the developer of a gas station and convenience store. It is managed by D, E, and another individual.

## Law

Section 501(c)(4) of the Code provides for the exemption from federal income tax of organizations not organized for profit but operated exclusively for the promotion of social welfare. Further, exemption shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(4)-1(a)(1) states a civic league or organization may be exempt as an organization described in Section 501(c)(4) if it is not organized or operated for profit and it is operated exclusively for the promotion 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 IRC Section 501(c)(4) is one that is operated primarily for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 73-306 provides that an organization formed for the purpose of promoting the common interest of tenants who reside in a particular apartment complex does not qualify for exemption under Section 501(c)(4) of the Code. Any person regularly living in the complex was eligible for membership. The organization represented its member-tenants in negotiations with the management of the complex in order to secure better maintenance and services, as well as reasonable rents. The Ruling holds that the organization was not described in Section 501(c)(4) because it operated to benefit its members and, thus, was not primarily engaged in activities that promote the common good and general welfare of the community.

Revenue Ruling 74-17 describes a condominium owner’s association that maintains areas owned by the unit holders does not qualify for exemption under Section 501(c)(4) of the Code since such an organization primarily serves private interests. In this ruling, the state statute provided that the common areas of the



condominium property are owned by the unit owners as tenants in common, including streets, sidewalks, parks, and open areas.

Revenue Ruling 74-99 contemplated and clarified verbiage in Revenue Ruling 72-102, which states, "By administering and enforcing covenants, and owning and maintaining certain non-residential, non-commercial properties of the type normally owned and maintained by municipal governments, this organization is serving the common good and the general welfare of the people of the entire development." Revenue Ruling 74-99 provides clarification of the phrase "non-residential, non-commercial properties." This Ruling specifies that the only areas and facilities encompassed were those traditionally recognized and accepted as being of direct governmental concern in the exercise of the powers and duties entrusted to governments to regulate community health, safety, and welfare. Thus, it was intended only to approve ownership and maintenance of such areas as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public.

Revenue Ruling 75-286 states 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 benefiting the community as a whole as well as enhancing the value of its members' property rights, will not qualify for exemption under IRC 501(c)(3) but may qualify under Section 501(c)(4) of the Code. Its activities consist of paying the city government to plant trees on public property within the block, organizing residents to pick up litter and refuse in the public streets and on public sidewalks within the block, and encouraging residents to take an active part in beautifying the block by placing shrubbery in public areas within the block. Much of the public area improved by the organization is part of the public roadway lying between the sidewalk and the street in front of private property owned by members of the organization.

In Contracting Plumbers Cooperative Restoration Corp. v. United States, 488 F. 2d 684 (2nd Cir. 1973), cert. denied, 419 U.S. 827, an organization whose purpose was to ensure the efficient repair of "cuts" in city streets which resulted from its members' plumbing activities did not qualify for exemption under Section 501(c)(4) of the Code. The Court concluded that there were several factors which evidenced the existence of a substantial nonexempt purpose. The factors included, but were not limited to, the members' substantial business interest in the organization's formation and the fact that each member of the cooperative enjoyed economic benefits precisely to the extent they used and paid for restoration services.

#### **Application of law**

You do not qualify for exemption under Section 501(c)(4) of the Code, because your net earnings inure to private shareholders or individuals. Property owners hold the voting power in your organization while your officers are also managers and/or members of the for-profit property owners within your development. Your income is applied to the common expenses, defined above, for the benefit of your members, each of whom has an ownership interest in the common areas, and owns a lot which includes a common maintenance area, defined above.

You do not meet the requirement of Treas. Reg. Section 1.501(c)(4)-1(a)(1) that to be exempt under Section 501(c)(4) an organization must be operated exclusively for the promotion of social welfare, because you are not primarily engaged in promoting in some way the common good and general welfare of the people of the community, through civic betterments and social improvements per Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i). You are engaged primarily in activities benefiting your members, the commercial entities which operate within the development, rather than in civic betterments and social improvements promoting the common good and general welfare of the people of the community



Apart from assisting your members to conduct their businesses by meeting their shared necessary expenses for the maintenance, repair, replacement, restoration, operation, and management of the common area and common maintenance area, you provide advertising for them. A large-scale group monument advertising sign is in the common area. You also approve individual property owner signs in the common area. Common expenses include "Marketing, advertising and promotion expenses." Such expenditures do not promote the general welfare of the community, nor is it intended to do so, but promotes purely private commercial interests.

Like the organization in Revenue Ruling 73-306, the primary beneficiary of your activities is your members, and are not primarily engaged in activities that promote the common good and general welfare of the community.

You are like the condominium association in Revenue Ruling 74-17. As these benefited as tenants in common from the association's expenditures, so your member benefits from your expenditures on the common areas through its undivided ownership interest in the common areas

You are unlike the homeowners' association in Revenue Ruling 74-99. Prescinding from the fact that this ruling concerns an association of homeowners and not commercial businesses, it contemplates exemption for a non-profit organization that owns property that is "normally considered the within the scope of the government maintenance", *and* for the use and enjoyment of the general public. The common areas which you maintain, while superficially similar to the streets, sidewalks and green areas of the Revenue Ruling, are not owned by you, and are not established for the enjoyment of the general public, but to provide customer access to members' business establishment and to attract potential customers. Indeed, according to your own Declaration, the common areas are for the use and enjoyment, not of the general public, but "Owners and their Related Parties."

You are not like the organization in Revenue Ruling 75-286, as since your activities primarily benefit your members. In the Revenue Ruling, however, improvements are made to public property, which happens to be adjacent to private property. Any enhancement of the value of the adjacent private properties is incidental. The common areas you maintain, however, are privately owned., and the benefit to private interests is direct and intentional.

You are similar to Contracting Plumbers Cooperative Restoration Corp, which provided street repair services for the benefit of member businesses.

### **Your position**

You made the following statements with regard to why you believe you qualify under Section 501(c)(4) of the Code:

- Although you are a commercial development, this does not impede your ability to be defined as a "community."
- Maintaining your area provides a benefit to the neighboring residential community as well.
- Your common areas are open to the public.
- Your activities might reduce the burden on the local city government, which would otherwise be required to maintain and repair such areas.

### **Our response to your position**

Your position incorrectly assumes that a body of precedents relating to homeowners' associations can be applied to an association of commercial property owners. The two types of organization are plainly



distinguishable. Members of a homeowners' association are individuals and families owning residences in close proximity who have organized to address neighborhood conditions affecting them in common. They are not entities engaged in business which have organized for cost sharing purposes.

- That a commercial development can ever constitute a community is extremely debatable. However, even were your development a community, it would not qualify under Section 501(c)(4), because it primarily benefits the private interests of its members.
- The commercial development may be convenient to the neighboring residential community, but you yourself do not appear to confer any benefit on it by your own activities.
- As to your common areas being open to the public, it is typical for commercial developments to be open to the public. If the public were not able to access the developments, there could be no exchange of commerce. Even if the common areas included amenities that attracted members of the general public that were not also customers of the commercial ventures, it would be the commercial entities which own the common areas, and not you, that provide the amenities.
- As to your assertion that your management and maintenance of the common areas reduces the burden on the local city government, "which would otherwise be required to maintain and repair such areas," you have provided absolutely no evidence. To support this statement, you provided no maps, no verbal descriptions, nor any statements from local government.

### **Conclusion**

Based on the information submitted, you are not organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(4) of the Code and the related income tax regulations. You provide maintenance, paving, landscape, signage, advertising and promotion, etc., for private for-profit entities. This does not serve the public good, this serves private interests. Further, your officers are also managers and/ or members of the for-profit property owners within your development, indicating your net earnings inure to the benefit of private shareholders or individuals.

### **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](http://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