



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

**Date: November 19, 2018**

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Form you must file:**

**Tax years:**

**Number: 201907013**  
**Release Date: 2/15/2019**

**UIL: 501.04-00**

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 6, 2018**

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

B = Date

C = State

D = Number

E = Name

**UIL:**

501.04-00

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)(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 B in the State of C as a nonprofit corporation. The purpose in your Articles of Incorporation states you are organized to provide for maintenance, preservation and control of lots and common areas within E. Your primary activity is providing for maintenance for common areas owned individually by your members in a geographical area which you described as a commercial shopping center with no personal residences. These common areas enable access to private parking lots from public streets and include landscape areas and asphalt areas directly adjacent to public streets or the associated drive area. Besides maintaining landscape and asphalt areas, you indicated that you provide maintenance for other common area and building exteriors in and around property located at E.

You have D members consisting of individual businesses. Further, ownership of a lot within E is the sole qualification for membership.

Your source of revenue are members' assessments. Disbursements are for property maintenance such as landscaping. In addition, each member's assessment is determined by allocating expenses among your members based on their individual usage divided by the total usage for all members. You collect these funds quarterly and generally use all funds collected for the maintenance of E.

Finally, you indicated:

- All assets are earmarked for maintenance repairs on common areas. There are no surplus funds to distribute.

- You exist to perform common area maintenance on the D member lots at E.
- According to your bylaws, members are owners of lots located on the real property within E and membership terminates upon a member ceasing to be an owner of a lot.
- Your Declaration of Protected Covenants, Conditions and Restrictions regarding Development and Use of Land in General, provides that no portion of the property was to be developed or used for residential purposes except for incidental to use for watchmen and guards to protect the property.
- You pay a management company who is responsible for providing the maintenance to the common areas.
- You have           board members.
- You have           annual meeting for 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 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 a civic league or organization may be exempt as an organization described in Section 501(c)(4) of the Code 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 this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 54-394, 1954-2 C.B. 131 describes an organization that did not qualify under Section 501(c)(4) of the Code; its only activity was to provide television reception on a cooperative basis to its members; it was held the organization was operating for the benefit of its members rather than for the promotion of the welfare of mankind.

Revenue Ruling 74-99, 1974-1 C.B. 131 describes the circumstances in which an otherwise qualifying home owner's association organization may qualify for exemption under section 501(c)(4) of the Code.

Revenue Ruling 75-286, 1975-2 C.B. 210 describes an organization that qualified under Section 501(c)(4) of the Code because its activities promoted social welfare by beautifying and preserving public property in cooperation with the local government. The organization's membership was limited to the residents and business operators within a city block and its financial support was from receipts from block parties and voluntary contributions from members. Although these activities were limited to a particular block, the community as a whole benefited from them.

### **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 convenience of your members.

Moreover, you do not meet the provisions of Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i). For example, you collect assessments from members based on their usage percentage to maintain their individually owned property which enables access to private parking lots from public streets and include landscape areas and asphalt areas directly adjacent to public streets or the associated drive area. You also provide maintenance for other common area and building exteriors in and around property located at E. This illustrates you do not primarily operate to promote civic betterment or social welfare within the meaning of Section 501(c)(4) of the Code.

You are similar to the organization described in Revenue Ruling 54-394 because your activities are directed toward providing services to your D member business owners consisting of maintenance of individually owned common areas in exchange for assessments. This shows you are primarily operating for the economic benefit or convenience of the member business property owners rather than for the benefit of social welfare which precludes exemption under Section 501(c)(4) of the Code.

You do not meet the criteria to qualify as a homeowner's association under Section 501(c)(4) of the Code as explained in Revenue Ruling 74-99 because your membership is comprised of businesses.

You are not like the qualifying organization described in Revenue Ruling 75-286. For example, you are providing for maintenance for private property which you describe as a commercial shopping center with no personal residences. Furthermore, members' assessments finance your activities while the organization in the revenue ruling receives voluntary contributions from members and revenue from block parties. This shows your activities are not benefitting the community as a whole but are primarily benefitting your members.

### **Conclusion**

Accordingly, since the benefits from your maintenance activities are primarily for the economic benefit of your D members, and there is little or no benefit to the community, you do not qualify for exemption from federal income tax 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](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