

Internal Revenue Service  
Appeals Office  
San Jose Appeals, MS-7100  
55 S. Market St., Suite 440  
San Jose, CA 95113

Release Number: **201922039**  
Release Date: 5/31/2019  
Date: March 7, 2019

Department of the Treasury

Person to Contact:

Employee ID Number:  
Tel:  
Fax:  
Contact Hours:  
Refer Reply to:

In Re:  
EO Determination  
Tax Period(s) Ended:

UIL:  
501.04-00

Dear \_ \_ \_

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Section 501(c)(4).

We made the adverse determination for the following reason(s):

You are not operated exclusively for the promotion of social welfare within the meaning of Section 501(c)(4) and Treasury Regulation 1.501(c)(4)-1, as your activities primarily benefit your members. You are a gated community with a guard manning the gate and membership is open to residents only. You maintain private properties and primarily serve the needs of your members. Access to your properties by the general public is only available on a limited basis. Your benefits to nonmembers are insubstantial compared to those afforded to your members and are not extended to both members and nonmembers on an equal basis.

You're required to file Federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in either:

- United States Tax Court,
- The United States Court of Federal Claims,
- The United States District Court for the District of Columbia.

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court  
400 Second Street, NW  
Washington, DC 20217

US Court of Federal Claims  
717 Madison Place, NW  
Washington, DC 20005

U. S. District Court for the District of Columbia  
333 Constitution Ave., N.W.  
Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file petition for declaratory judgment under section 7428 of the Code.

Please refer to the enclosed Publication 892, How to Appeals an IRS Determination on Tax -Exempt Status.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit [www.irs.gov/advocate](http://www.irs.gov/advocate) for more information.

If you have any questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosure: Publication 892

cc:





**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Date: July 17, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = Date  
C = State  
D = Date  
E = Number  
F = Number  
G = Number  
H = Date  
J = Date  
K = Date  
L = Number

**UIL:**

501.04-00

501.04-06

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.

**Issue**

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

**Alternative Issue**

In the event that upon appeal you are found to qualify for exemption under Section 501(c)(4) of the Code, do you qualify for exemption retroactively from your date of formation? No, for the reasons stated below.

**Facts**

You were incorporated on B in the State of C as a nonstock corporation. You submitted Form 1024 on K. Your Articles of Incorporation indicate:

- You do not contemplate pecuniary gain or profit to your members and no part of your net earnings will inure to the benefit of any member or individual except through the acquisition, construction, management, maintenance or care of common areas or through the rebate of any excess membership dues, fees, or assessments.

- Your purposes are (i) to provide for the acquisition, construction, management, maintenance and care of common areas, and any area for which you are responsible: (ii) at your option to obtain, manage and maintain services for the property, or sections thereof, including, as necessary, refuse collection, landscape and storm water pond maintenance, street cleaning and snow plowing; and (iii) to take other acts or actions which would promote the health, safety or welfare of the owners and residents.

You also filed amended and restated Articles of Incorporation on D with the State of C. These show you have one class of members which are the individual property owners in your Association. A person automatically becomes a member upon his/her becoming an owner and will remain a member for so long as he/she is an owner. Theses also indicate that your members have voting rights and each member has one (1) vote on each matter for each lot owned and that you are managed by the Board of Directors. The number, terms, and election of Board of Directors is fixed by your bylaws.

Your Form 1024 states you are comprised of E residential lots comprising approximately F acres. There are about G residents, and common areas consisting of      miles of roads and recreational areas. There is a gatehouse at the only entrance to your gated property where there is a paid security patrol based. All members have unrestricted access through this single point entry. In addition, the areas in your gated community primarily for the exclusive benefit of your members consist of:

- monument entry signs
- miles of roadways
- Extensive greenbelts and slopes
- lakes/ponds
- Fences
- Recreational facilities consisting of:
  - 18-hole golf course
  - Clubhouse and dining facility
  - Fitness center
  - Indoor and outdoor swimming pools
  - Tennis courts and Bocce ball courts

Furthermore, you provide a private security force to serve your members/owners. Besides patrolling the entrance to limit access, the patrol service duties include patrolling the gated community while watching out for unusual or suspicious activity to provide security for members and reduce crime. Because of their presence in your gated community, the patrol force like most private security services are often the first responders for emergencies and consequently may interact with local law enforcement and emergency medical personnel.

Members of the general public only have access in the following situations:

- They are members of the golf club. Approximately      % of homeowners in your association are annual members of the golf club. There are no specific requirements to be allowed to join.
- They are part of a group that has rented event or meeting space in one of your two clubhouses.
- They are voting at your clubhouse, which is a designated polling location.
- They are a member of a nonprofit organization that is using meeting room space at the clubhouse.



- They are a participant or attendee at one of the two annual golf tournaments at your golf course.

You indicated you are primarily engaged in promoting the common good and general welfare of the residents of your association and surrounding areas. You also believe you are a community. You indicated that the “public” consists of members of the “community,” not the world-at-large. You do not have any obligation to provide access to the world-at-large. You do offer golf memberships to the public and the restaurant is also open to the public. In addition, you provided the following:

1. You conduct road maintenance for the      miles of roads you own, and are fully responsible for the maintenance, repair and reconstruction of these roads. You believe your road maintenance activities promote the general welfare of your members/owners and, because road maintenance is an essential governmental function, the activities lessen the burdens of local government.
2. You believe the private patrol service promotes the general welfare of your community.
3. You provide for the maintenance of monument signs, greenbelts and fences that are adjacent to publicly owned and operated streets. You wrote this is done as part of a beautification project for the benefit of the public, meaning the world-at-large.
4. You maintain a clubhouse which is available to members and the public on a fee basis. The clubhouse is also used occasionally as a polling location for all local, state, and national elections.
5. You provide for snow removal services on your streets during the winter months.
6. You operate and maintain an 18-hole golf course and eight tennis courts that are open to the public for a fee.

You also wrote that some of your activities may benefit the general public. Meeting rooms in the clubhouse are available for public rental. The bocce courts are sometimes used by the local Special Olympics group. You present seasonal monthly concerts that are open to the general public. You host two annual golf tournaments for a fee for charitable organizations. One of these is free for Veterans.

You have several committees which support your business and social activities for the benefit of your members. These committees consist of :

- Board of Directors
- Budget and Finance Committee
- Architectural Review Committee
- Investment Committee
- Facilities Committee
- Grounds Committee
- Golf Committee
- Food and Beverage Committee
- Community Relations Committee
- Emergency Preparedness Committee

These committees provide a structure for your funding, determine that architectural covenants are complied with, determine that your members/owners ‘construction activities are within environmental guidelines, and plan for long-term repair and replacement of your infrastructure assets.



You are supported primarily by members' assessment fees. Your income sources for the year ended H also consisted of Recreation revenue (Golf, Dining, other), interest income and gains on sales, newsletter revenues as well as other revenue. Furthermore your golf income is comprised of % from public play; public revenues from the dining facility make up % of total dining income.

Finally, you have filed Form 1120 or 1120H annually for the range of years of J. For the year ended H, you filed Form 990. Since you believe that exempt status has always existed for you, you are requesting that exempt status be granted retroactively to your formation date of as provided by Revenue Ruling 80-108 and Publication 557.

### **Law**

Section 501(c)(4) of the Internal Revenue Code reads: Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation. An organization described in subsection (c) or (d) or Section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under Section 502 or 503. The following organizations are referred to in subsection (a): (4) (A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes. (B) Subparagraph (A) 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 reads: Civic organizations and local associations of employees. (a) Civic organizations--(1) In general. A civic league or organization may be exempt as an organization described in Section 501(c)(4) of the Code if: (i) It is not organized or operated for profit; and (ii) It is operated exclusively for the promotion of social welfare. (2) Promotion of social welfare--(i) In general. 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 72-102, 1972-1 CB 149 provides that the organization is a membership organization that was formed by a developer and is operated to administer and enforce covenants for preserving the architecture and appearance of a housing development, and to own and maintain common green areas, streets, and sidewalks for the use of all development residents. Its activities are for the common benefit of the whole development rather than for individual residents or the developer.

Revenue Ruling 74-99, 1974-1 C.B. 131, modified Rev. Rul. 72-102 and held that a homeowners association, in order to qualify for exemption under Section 501(c)(4) of the Code, must, in addition to otherwise qualifying for exemption under Section 501(c)(4), satisfy the following requirements: (1) It must engage in activities that confer benefit on a community comprising a geographical unit which bears a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof; (2) It must not conduct activities directed to the exterior maintenance of private residences; and (3) It owns and maintains only common areas or facilities such 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 and is not restricted to members of the homeowners' association.



Revenue Ruling 80-63, 1980-1 CB 116, to clarify Revenue Ruling 74-99, describes specific questions that have been raised and their answers are as follows:

The first question asks does Rev. Rul. 74-99 contemplate that the term "community" for purposes of section 501(c)(4) of the Code embraces a minimum area or a certain number of homeowners.

The answer is no because Rev. Rul. 74-99 states that it was not possible to formulate a precise definition of the term "community". The ruling merely indicates what the term is generally understood to mean. Whether a particular homeowners' association meets the requirements of conferring benefit on a community must be determined according to the facts and circumstances of the individual case. Thus, although the area represented by an association may not be a community within the meaning of that term as contemplated by Rev. Rul. 74-99, if the association's activities benefit a community, it may still qualify for exemption. For instance, if the association owns and maintains common areas and facilities for the use and enjoyment of the general public as distinguished from areas and facilities whose use and enjoyment is controlled and restricted to members of the association then it may satisfy the requirement of serving a community.

The second question asks may a homeowners' association, which represents an area that is not a community, qualify for exemption under Section 501(c)(4) of the Code if it restricts the use of its recreational facilities, such as swimming pools, tennis courts, and picnic areas, to members of the association?

The answer is no because Rev. Rul. 74-99 points out that the use and enjoyment of the common areas owned and maintained by a homeowners' association must be extended to members of the general public, as distinguished from controlled use or access restricted to the members of the association. For purposes of Rev. Rul. 74-99, recreational facilities are included in the definition of "common areas".

Revenue Ruling 80-108, 1980-1 CB 119 describes an organization, which otherwise qualifies for exemption from federal income tax under both section 501(c)(3) and Section 501(c)(4) of the Code. The Rev. Rul. states that the organization did not file for recognition of exemption under Section 501(c)(3) within 15 months from the end of the month in which it was organized as required by Treasury Regulations Section 1.508-1(a)(2)(i), but established that it qualifies for exemption under Section 501(c)(4) from the date of its organization to the date its exemption under section 501(c)(3) becomes effective.

Revenue Procedure 2017-5, 2017-1 I.R.B. 2321, describes the procedures for submitting applications for recognition of Exempt Status under Section 501 or Section 521 in Section 6. This includes:

- (1) Item 03 of Section 6 states an organization seeking recognition of exempt status under Section 501 or Section 521 is required to submit the appropriate completed application form or the appropriate completed letter request. In the case of a numbered application form, the current version of the form must be submitted.
- (2) Item 08 of Section 6 states a determination letter recognizing exemption of an organization described in Section 501(c), other than Section 501(c)(29), is usually effective as of the date of formation of an organization if: (1) its purposes and activities prior to the date of the determination letter have been consistent with the requirements for exemption; (2) it has not failed to file required Form 990 series returns or notices for three consecutive years; and (3) it has filed an application for recognition of exemption within 27 months from the end of the month in which it was organized.



- (3) Item 08 of Section 6 further describes when an application is not submitted within 27 months of formation. An organization that otherwise meets the requirements for tax-exempt status and the issuance of a determination letter that does not meet the requirements for recognition from date of formation will generally be recognized from the postmark date of its application or the submission date of its 1023-EZ, as applicable.

In Commissioner v. Lake Forest, Inc., 305 F.2d 814 (1962), the case involved a nonprofit membership housing cooperative that provided low cost housing to its members. In denying exemption, the court stated that the organization was not organized exclusively for the promotion of social welfare. The court found that although its activities were available to all citizens eligible for membership, "its contribution is neither to the public at large nor of a public character." The court looked to the benefits provided and not to the number of persons who received benefits through membership.

In Flat Top Lake Association v. United States (1989 4th Circuit), 868 F.2d 108, the Court held that a homeowners association did not qualify for exemption under Section 501(c)(4) of the Code when it did not benefit a "community" bearing a recognizable relationship to a governmental unit and when its common areas or facilities were not for the use and enjoyment of the general public.

In Indian Lake Property Owners Association v. Director of Revenue, 813 S.W.2d 305 (1991) the Supreme Court of Missouri, Holstein, J., held that: (1) homeowners' association that enforced subdivision covenants, maintained subdivision roads, and provided security and trash collection services to residences within the subdivision was not a "civic organization" entitled to sales and use tax exemption, and (2) to qualify as a "civic organization," an organization's purposes and functions must be concerned with and relate to citizenry at large. Further, the judge discusses Flat Top Lake within the text, stating, "Clearly Congress believed that an organization cannot serve social welfare if it denies its benefits to the general public. Implicitly, Congress recognized that a true 'community' functions within a broader national fabric. Service to such a community thereby furthers the national interest by expanding potential, by opening opportunities to all citizens who may find themselves within the bounds of that particular community." Exemption denied (affirmed).

In Lake Petersburg Association v. C.I.R., T.C. Memo 1974-55, 33 T.C.M. (CCH) 259, T.C.M. (P-H) P 74,055, 1974 PH TC Memo 74,055 (1974), the Association was an idea presented by the Petersburg Chamber of Commerce to help stimulate the economy in the surrounding area. A group of businessmen contributed capital and acquired capital from other sources such as the City, the Chamber and two banks, to obtain funding to purchase property and develop it. They formed an association, which required prospective owners to become dues-paying members. The dues helped finance the development of the lake and recreational facilities on said property. Use of the assets was limited to members and their guests. The Association's basis for their argument is that the organization was created to stimulate the economy and make it a better place to live, thereby fulfilling the requirement of a social welfare organization under Section 501(c)(4) of the Code. The respondent argued that it was operated primarily for the benefit of its members and therefore did not qualify. The Court found that regardless of the original intent, the actual benefit went to the members and any economic benefits to the Petersburg citizens were "indirect and remote." Exemption was denied.

In Rancho Santa Fe Association v. United States, 589 F. Supp. 54, 54 A.F.T.R. 2d 84-5518 (1984), the Association's request for affirmation of their exempt status as a Section 501(c)(4) of the Code organization was granted by the Court. The facts are that the Association consists of 6,100 acres of property, 600 acres of which is owned by the Association and the rest by members who are property owners. Of the 600 acres owned by the



Association, 465 acres are dedicated to parkland and open space, playgrounds, athletic fields, a public parking lot, a community clubhouse, and hiking and bridle trails, which are all open to the public. The remaining 135 acres comprise an 18-hole golf course and eight tennis courts which are only available to members. The Association oversees the governance of the property, furnishes private security protection, and functions as a liaison between the community and the Board of Supervisors on issues which require the participation of larger governmental entities, such as maintenance of the rights-of-way and the sanitation system. Finally, the Association serves the community in loaning out its facilities free of charge to various public service organizations as well as to the schools. The court decided that "It performs the functions of a governmental entity and brings about civic betterments and social improvements that would be sorely missed by the Rancho Santa Fe community should they be lost or curtailed." Exemption was granted.

### **Application of law**

You are not described in Section 501(c)(4) of the Code and Treas. Reg. Section 1.501(c)(4)-1. Although you claim to be open to the general public, all of your common areas and facilities such as streets, road ways, greenbelt ways, lakes/ponds, swimming pools, bocce ball and tennis courts, golf course, fitness center, clubhouse and dining facilities are enclosed within the gated property. You have a single point gated entry. Access to the property and all of the amenities are restricted to members of the association, their guests, and members of the golf course. A manned gate house prevents access to the general public who are not members of the golf club unless they are coming to vote, renting the clubhouse or meeting space, or taking part in an event. The general public does not have unrestricted access to your community.

You are not similar to the organization in Revenue Ruling 72-102, 1972-1 CB 149. You restrict access as well as provide services that benefit member owners.

You are not similar to the organizations in Revenue Ruling 74-99 and Revenue Ruling 80-63 where the general public significantly benefited from the organizations operations.

You restrict the general public from access to your facilities, thereby failing to confer a benefit onto the community. Where there is failure to serve the community, there is a failure to promote social welfare, which is a requirement for an organization to be described under Section 501(c)(4) of the Code. An organization exempt under Section 501(c)(4) must operate "exclusively for the promotion of social welfare" which is further explained by the Regulations thus being primarily engaged in promoting in some way the common good and general welfare of the people of the community. Revenue Ruling 74-99 confirms that the benefit must be conferred to "the community". Revenue Ruling 80-63 clarifies Revenue Ruling 74-99 stating that while a "community" cannot be strictly defined, that if the association owns and maintains common areas and facilities for the use and enjoyment of the general public as distinguished from areas and facilities whose use and enjoyment is controlled and restricted to members of the association then it may satisfy the requirement of serving a community. The security gatehouses to your fenced in property and the fact there is a single point entry exclude the general public from entering the property. Excluding the public does not conform to the definition of a Section 501(c)(4) organization. Nonmembers are generally only granted access when coming to vote or taking part in specific events or to play golf as a member of the golf club.

Unlike the organizations in Revenue Ruling 74-99 and Revenue Ruling 80-63 your activities do not serve the general public.



You do not operate in a way that significantly benefits the surrounding community, as required by Section 501(c)(4) of the Code and explained in Revenue Ruling 80-63. This was also an issue in the Commissioner v. Lake Forest, supra, case where the court ruled against exemption for the organization. The amount of benefit, not the number of people receiving the benefits, was at issue. The public benefit was insignificant and warranted a loss in exempt status. Similarly, your benefit to the general public is insignificant. Unless they are coming on the property for a specific purpose or event, you do not provide unrestricted access to streets, road ways, greenbelt ways, lakes/ponds, swimming pools, bocce ball and tennis courts, golf course, fitness center, clubhouse and dining facilities and the like to the general public beyond your members and guests.

You are similar to the organizations in Commissioner v. Lake Forest, supra, Flat Top Lake Association, supra, Indian Lake Property Owners Association, supra, and Lake Petersburg Association v. C.I.R., supra where the general public did not significantly benefit from the activities of the organizations. You are not similar to the organization in Rancho Santa Fe Association v. U.S.A., supra.

Court documents for Indian Lake Property Owners Association, supra, state that an organization "cannot serve social welfare if it denies its benefits to the general public." Clearly, you are denying benefits to the public by having a manned gate house with one single point of entry that restricts access. Similar to the Indian Lake case, you are not serving the public. The usage of the property by guests who are permitted to enter is minimal and incidental. This is not in accordance with a Section 501(c)(4) of the Code. Based on the fact patterns, tax-exempt status should also be denied.

The lack of public benefit is closely aligned with those as seen in Flat Top Lake v. U.S.A., supra, and Lake Petersburg Association v. C.I.R., supra. Similar to Lake Petersburg, you limit the facilities to members and their guests. The manned gate house on the access point restricts anyone other than members and guest to use the streets, road ways, greenbelt ways, lakes/ponds, swimming pools, bocce ball and tennis courts, golf course, fitness center, clubhouse and dining facilities. All of the maintenance and upkeep benefit the members. In addition, as stated in Flat Top, the organization "operates for the exclusive benefit of its members and does not serve a 'community' as that term relates to the broader concept of social welfare." The courts denied exemption to these aforementioned organizations. Following similar fact patterns, tax-exempt status should also be denied.

You are not similar to the organization described in Rancho Santa Fe Association v. U.S.A. For example, you do not provide vast amounts of parkland, open space, facilities and equipment to the public. In addition, you only provide the usage of your facilities and roads to members and guests. You have a single point entry to your grounds. Members of the general public are allowed only access if they are paying members of the golf course, guests of your members, have rented or are guests of individuals who have rented the facilities, or are guests of non-profits using your facilities. Unrestricted access to members of the general public is only permitted if they are coming on your property for the purpose of voting only. Unlike Rancho Santa Fe Association, all of your amenities are not primarily available to the neighborhood community beyond your members, their guests, paying members and guests. Based on the facts, you are not a community within yourself such as the organization in Rancho Santa Fe and this precludes you from tax exemption under Section 501(c)(4) of the Code.

#### **Alternate Issue**

If upon appeal you are granted exemption under Section 501(c)(4) of the Code, you should not qualify for exemption retroactively from your date of formation. As stated in Revenue Procedure 2017-5, a determination letter or ruling is usually effective as of the date of formation if (1) its purposes and activities prior to the date of



the determination letter or ruling have been consistent with the requirements for exemption; (2) it has not failed to file the required Form 990 series returns or notices for three consecutive years; and (3) it has filed an application for recognition of exemption within 27 months from the end of the month in which it was organized.

You submitted Form 1024 about L years after your formation. You submitted tax forms Form 1120/ 1120H for the range of years of J. In filing Form 1120 or 1120H since your formation, you have held yourself out to the public and the Service as a taxable entity. This is contrary to your position that your purposes and activities prior to your submission of the Form 1024 and the filing of the Form 990 were consistent with the requirements for exemption. In addition, you only began filing Form 990 for the year ended H proving that you have not met the requirement that you file a notice or a 990 return for three consecutive years.

Finally you are dissimilar to the organization described in Rev. Rul. 80-108, which is an organization described in Section 501(c)(3) of the Code. You would not qualify for exemption under section 501(c)(3) as a property owners association.

### **Conclusion**

You are not described under Section 501(c)(4) of the Code because you are not operated exclusively for the promotion of social welfare and your net earnings inure to the benefit of your association members.

Likewise, you do not meet the requirements of Treas. Reg. Section 1.501(c)(4)-1 because you are not primarily engaged in promoting the common good and general welfare of the people of the community.

The common areas and roadways of your property are enclosed in the gated property at a single point entrance. Only your members, members of the golf course, individuals and companies renting the facilities, non-profit organizations being allowed to use the facilities and guests of any of the previous are permitted to enter and use the amenities. The public is thereby restricted from accessing the common areas of your property, which does not primarily further the exempt purpose of an organization exempt under Section 501(c)(4) of the Code.

If upon appeal you are granted exemption under Section 501(c)(4) of the Code, you should not qualify for exemption retroactively from your date of formation. You failed the requirements in Section of Revenue Procedure 2017-5 that you did not file Form 990 series or notices for three consecutive years. You also failed to file an application for recognition of exemption within 27 months from the end of the month in which you were organized. Therefore, if you are granted exemption under Section 501(c)(4) upon Appeal, you do not qualify for recognition of exemption from your formation date.

### **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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892

Cc: POA