



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1100 Commerce Street, MC 4920DAL
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201926015**
Release Date: 6/28/2019
UIL: 501.03-00

Date: Feb 27 2019

Person to Contact:

Identification Number:

Contact Telephone Number:

Telephone Number:

Fax:

EIN:

CERTIFIED MAIL - Return Receipt Requested

Dear _____ :

This is a final 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 Code section 501(c)(4) for the taxable year ended December 31, 20XX.

Our adverse determination as to your exempt status was made for the following reason(s):

You have not established that you were operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(4) and that no part of your net earnings inured to the benefit of private shareholders or individuals.

You failed to respond to repeated reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, and activities as required by I.R.C. §§ 6001 and 6033(a)(1) and Rev. Rul. 59-95, 1959-1 C.B. 627. You also failed to respond to questions about the nature of your activities.

In addition, your primary purpose was to benefit your members, not the community. Specifically, you did not extend access to your common areas to the general public and you have not established that you conferred benefit on the community and that you did not conduct exterior maintenance on private residences.

As such, you failed to meet the requirements of I.R.C. § 501(c)(4) in that you have not established that you were operated exclusively for exempt purposes and that no part of your net earnings inured to the benefit of private shareholders or individuals.

Organizations that are not exempt under section 501 generally are required to file federal income tax returns (Form 1120 or Form 1041) and pay tax, where applicable. For further instructions, forms, and information please visit www.irs.gov.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892. You may 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

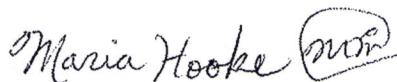
U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

You may also be eligible for help from the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 1-877-777-4778.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

A handwritten signature in cursive script that reads "Maria Hooke" followed by a circled set of initials "MH".

Maria Hooke
Director, EO Examinations

Enclosures:
Publication 892



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations Examination

Date:
August 21, 2018
Taxpayer ID number:

Form:
990-N
Tax periods ended:
December 31, 20XX
Person to contact:

Employee ID number:
Telephone number:
Fax:
Address:
Manager's contact information:

Employee ID number:
Telephone number:
Response due date:
September 21, 2018

CERTIFIED MAIL – Return Receipt Requested

Dear _____ :

Why you're receiving this letter

We enclosed a copy of our audit report, Form 886-A, Explanation of Items, explaining that your organization doesn't qualify as an organization described in Internal Revenue Code (IRC) Section 501(c)(4).

This letter is not a determination of your tax-exempt status under IRC Section 501 for any period other than the tax periods above.

If you agree

If you haven't already, please sign the enclosed Form 6018, Consent to Proposed Action, and return it to the contact person shown at the top of this letter. We'll issue a final adverse letter determining that you aren't an organization described in IRC Section 501(c)(4) for the periods above.

If you disagree

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.
3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to sign a consent to extend the period of limitations for assessing tax. This is to allow the IRS Appeals Office enough time to consider your case. For your protest to be valid, it must contain certain specific information, including a statement of the facts, applicable law, and arguments in support of your position. For specific information needed for a valid protest, refer to Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

Fast Track Mediation (FTM) referred to in Publication 3498, The Examination Process, generally doesn't apply now that we've issued this letter.

4. Request technical advice from the Office of Associate Chief Counsel (Tax Exempt Government Entities) if you feel the issue hasn't been addressed in published precedent or has been treated inconsistently by the IRS.

If you're considering requesting technical advice, contact the person shown at the top of this letter. If you disagree with the technical advice decision, you will be able to appeal to the IRS Appeals Office, as explained above. A decision made in a technical advice memorandum, however, generally is final and binding on Appeals.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final adverse determination letter.

In the future, if you believe your organization qualifies for tax-exempt status and would like a status determination letter from the IRS, you can request a determination by filing Form 1024, Application for Recognition of Exemption Under Section 501(a), and paying the required user fee.

Contacting the Taxpayer Advocate Office is a taxpayer right

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Additional information

You can get any of the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

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

Sincerely,



for Maria Hooke
Director, Exempt Organizations Examinations

Enclosures:

Form 6018

Form 4621-A Report of Examination

Form 886-A

Publication 892

Publication 3498-A

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer		Year/Period Ended

Date of Notice: August 21, 20XX

Issues:

Whether _____ (the organization), which qualified for exemption from Federal income tax under Section 501(c)(4) of the Internal Revenue Code, should be revoked due to its failure to respond and produce records?

Facts:

_____ was incorporated on September 13, 20XX in the State of _____ to function as a homeowners' association. The Articles of Incorporation, in part states that the organization was formed for the purpose to govern the affairs of that certain property.

_____ applied for tax-exempt status by filing the Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, on September 26, 20XX, and was granted tax-exempt status as a 501(c)(3) on October 17, 20XX, with an effective date of September 13, 20XX.

An organization exempt under 501(c)(3) needs to be organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes and to foster national and amateur sports competition.

_____ sent a letter on December 30, 20XX indicating the exemption approval letter dated October 17, 20XX was issued in error as _____ is neither a charity nor a private foundation, but a homeowner's association for the benefit of the members of the association only. _____ respectfully requested that Form 1023-EZ be rescinded along with the 501(c)(3) approval. In its place the organization is submitting the correct application, Form 1024 to be classified as a 501(c)(4).

_____ applied for tax-exempt status by filing the Form 1024, *Application for Recognition of Exemption Under Section 501(a) of the Internal Revenue Code*, on January 14, 20XX.

An organization exempt under 501(c)(4) as a homeowner's association must be able to show it serves the community rather the private interest of its members.

April 29, 20XX, _____ sent a written letter to withdraw the Form 1024 application along with Form 8940 *Request for Miscellaneous Determination* to terminate their 501(c)(3), private foundation status.

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May 29, 20XX, Letter 2244 was issued to _____, indicating the withdrawal of Form 1024 application would be requested in accordance with the organizations request.

_____ filed Form 990-EZ with an Internal Revenue Service received date of May 15, 20XX. The return indicated the tax-exempt status as a 501(c)(4) organization. The return was signed and dated by _____, the President/Director on April 12, 20XX.

_____ filed Form 990-N with an Internal Revenue Service received date of April 2, 20XX. The Form 990-N was submitted by _____

Organizations that have not received a ruling or determination letter granting tax-exempt status and that have filed a Form 990-EZ/990-N self-declaring their tax-exempt status can be disqualified from tax-exempt status for the specific self-declared tax years if it fails to qualify.

The organization was selected for audit to ensure that the activities and operations align with their approved exempt status.

The organization failed to respond to the Internal Revenue Service attempts to obtain information to perform an audit of Form 990-N for the tax year December 31, 20XX.

The organization has not filed a Form 990 series return for the tax years January 1, 20XX through December 31, 20XX tax year.

The Form 1023-EZ application and Form 1024 list the phone number of _____ for _____, the Director of _____

- Correspondence for the audit was as follows:
 - Letter 3606 (Rev. 6-2012) with attachments, was mailed to the organization on February 7, 20XX, with a response date of March 7, 20XX. This letter was not return by the post office as being undeliverable.
 - Letter 3844-A (Rev. 12-2015) with attachments, was mailed certified to the Director, _____ on March 13, 20XX, with a response date of April 13, 20XX, Article Number _____. Per the United States Postal Service (USPS) tracking, this item arrived at the Post Office at 8:00 am on March 26, 20XX in _____. This letter was not return by the post office as being undeliverable.

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- Letter 3844-A (12-2015), with attachments, was mailed certified to the Director, _____, per Form 1023 application, on March 13, 20XX, with a respond date of April 13, 20XX. Article Number _____. This was signed for on March 20, 20XX, the signature was unreadable.
- Letter 3844-A (12-2015), with attachments, was mailed to the Director, _____, on March 13, 20XX, with a respond date of April 13, 20XX. Article Number _____. This was signed for on March 23, 20XX by _____.
- Letter 3844-A (12-2015), with attachments, was mailed to the President, _____, on March 13, 20XX, with a respond date of April 13, 20XX. Article Number _____. This was signed for on March 23, 20XX, the signature was unreadable.
- Letter 5077-B (1-2017), *TE/GE IDR Delinquency Notice*, with attachments Form 4564, *Information Documents request*, Form 1023-EZ, Letter 5437 and the Form 990-EZ was mailed to the _____, on April 17, 20XX, with a respond date of May 9, 20XX. Article Number _____. Per the United States Postal Service (USPS) tracking, this item was unclaimed and returned to the Internal Revenue Service on May 23, 20XX.
- Letter 5077-B (1-2017), *TE/GE IDR Delinquency Notice*, with attachments Form 4564, *Information Documents request*, Form 1024, Form 8940, *Request for Miscellaneous Determination*, Letter 2244 and the Form 990-N was mailed to the _____, on August 13, 20XX with a respond date of August 27, 20XX. Article Number _____.
- Telephone contact for the audit was as follows:
 - March 8, 20XX, Tax Compliance Officer (TCO) called the phone number listed on the Form 1023-EZ application for the Director of _____ and received VMS. Left a message for an officer of the organization to return my phone call.
 - March 13, 20XX, called the phone number listed on the Form 1023-EZ application for the Director of _____ and received VMS. Left a message for the Director to return my phone call. Called the phone number listed on the 990-EZ that was filed for the tax-period ending December 31, 2015 for the President/Director, _____ of _____ and received VMS. Left a message for the President/Director to return my phone call.

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- April 5, 20XX, called the phone number listed on the Form 1023-EZ application for the Director of _____ and received VMS. Left a message for a return call.
- April 10, 20XX, called the phone number listed on the Form 1023-EZ application for the Director of _____ and received VMS. Left a message for a return call.

Law:

Section 501(c)(4) of the Internal Revenue Code provides that 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 and no part of the net earnings of such entity inures to the benefit of any private shareholder or individual may be exempt from federal income tax.

Treasury Regulation section 1.501(c)(4)-1 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 and is not an action organization as set forth in paragraph (c)(3) of Regulation section 1.501(c)(3)-1.

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.

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In Rev. Rul. 72-102, 1972-1 C.B. 149, an organization that was formed to preserve the appearance of a housing development and to maintain streets, sidewalks and common areas for use of the residents in the development was determined to qualify for exemption under Section 501(c)(4) of the Code.

In Revenue Ruling 74-17, 1974-1 C.B. 130, 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 does not qualify for exemption under section 501(c)(4) of the Code. Condominium ownership involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners. Since the organization's activities are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare.

Rev. Rul. 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.

IRC §6001 of the Code provides that every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

IRC §6033(a)(1) of the Code provides, except as provided in section 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Regulation §1.6001-1(c) of the Code provides that such permanent books and records as are required by paragraph (a) of this section with respect to the tax imposed by section

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511 on unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements. Such organizations shall also keep such books and records as are required to substantiate the information required by section 6033. See section 6033 and §§ 1.6033-1 through 1.6033-3.

Regulation §1.6001-1(e) of the Code provides that the books or records required by this section shall be kept at all time available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Regulation §1.6033-1(h)(2) of the regulations provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and section 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

Organization's Position

Taxpayer's position is unknown at this time.

Government's Position

In accordance with the above-cited provisions of the Code and regulations under sections 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

Section 1.6033-1(h)(2) of the regulations specifically state that exempt organizations

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shall submit additional information for the purpose on enabling the Internal Revenue Service to inquire further into its exempt status.

Using the rationale that was developed in Revenue Ruling 59-95, the Organization's failure to provide requested information should result in the termination of exempt status.

Conclusion:

It is the IRS's position that the organization failed to establish that it meets the reporting requirements under IRC §§ 6001 and 6033 to be recognized as exempt from federal income tax under IRC § 501(c)(4). Furthermore, the organization has not established that it is observing the conditions required for the continuation of its exempt status or that it is organized and operated exclusively for an exempt purpose. Accordingly, the organization's exempt status is revoked effective January 1, 20XX.

Form 1120-H, *U.S. Corporation Income Tax Return*, should be filed for the tax periods after January 1, 20XX.