



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201932016**
Release Date: 8/9/2019
UIL Number: 501.00-00, 501.04-00
501.04-07

Date:
May 16, 2019
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 26, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:
B = State
C = Date

UIL:
501.00-00
501.04-00
501.04-07

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(4). This letter explains the reasons 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 in the State of B on C. Your Articles of Incorporation state that you are organized for the "administration and operation of property owned on a condominium basis or by a homeowner association."

Your Bylaws state that each Unit Owner is a member. The membership shall terminate upon the sale or other disposition of such member's Unit, at which time the new Unit Owner shall automatically become a member.

The property you maintain consists of _____ condominium units located in _____ building, which is gated. Inside the building, there is a shared common area and staircase to the upper units. The common areas are equally owned by the _____ owners. You said the building and common areas are not for public use. There are no planned activities outside of performing or paying for maintenance of the building.

The source of your revenue is monthly dues from each of the _____ Unit Owners. The dues cover shared expenses such as electricity for common areas, water, etc. You also pay for maintenance, repairs or replacement of the common elements, such as the perimeter walls, floors and ceilings, windows, doors, and all fixtures and structures outside the Unit boundaries, such as pipes, ducts, flues, shafts, electrical wiring or conduits, etc.

Law

Section 501(c)(4) of the Internal Revenue 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.

Treasury Regulation Section 1.501(c)(4)-1(a)(2)(i) provides, in part, 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.

In Rev. Rul. 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 as defined by state statute with membership assessments paid by the unit owners does not qualify for exemption under Section 501(c)(4) of the Code. The common areas of the condominium property are owned by the unit owners as tenants in common, in equal shares, one for each unit. The maintenance and care of the common areas necessarily constitutes the provision of private benefits for the unit owners.

Rev. Rul. 74-99, 1974-1 C.B. 131, provides that a homeowners' association, to qualify for exemption under Section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

In Flat Top Lake Ass'n v. United States, 868 F.2d 108 (1989), 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.

Application of law

You are not operated for the promotion of social welfare under Section 501(c)(4) of the Code as described in Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i) because you are not primarily engaged in promoting in some way the common good and general welfare of the people of the community. Rather, you are formed to provide maintenance of common areas and common elements for the benefit of your members.

Your expenditures benefit your members directly, similar to the maintenance of the common areas of the condominium association described in Rev. Rul. 74-17. Therefore, since your activities primarily benefit your members, you cannot be said to be operated exclusively for the promotion of social welfare.

Contrary to Rev. Rul. 74-99, you do not serve a community that resembles an area that could reasonably be identified as governmental because you are a condominium association of only Unit Owners located in building. In addition, your common areas are not for the use and enjoyment of the general public, as you are a gated community.

Like the organization in the court case Flat Top Lake Ass'n, you do not serve a community which bears a reasonable recognizable relationship to an area ordinarily identified as governmental. Furthermore, your common areas are not for the use and enjoyment of the general public. Therefore, you are not primarily operating for the promotion of social welfare and fail to qualify for exemption under Section 501(c)(4) of the Code.

Conclusion

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

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.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, 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 they haven'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 gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information 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 later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest 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 they received it.

You can get 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 listed at the top of this letter.

Contacting the Taxpayer Advocate Service

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 if 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.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements