



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

Number: **201933014**
Release Date: 8/16/2019

Date: May 20, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL Code: 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: March 12, 2019

Employer ID number:

Contact person/ID number:

Contact Phone Number:

Contact fax number:

Legend:

B = Date
C = State
D = Company Name
E = Law

UIL:

501.04-00

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 formed on B in the state of C as a nonprofit mutual benefit corporation. Your stated purpose is to manage a common interest development under E as well as promote the common good, health, safety, and general welfare of all of the owners and occupants within the development.

The development you are managing is a business park consisting of condominiums and stand-alone buildings for sale or lease as well as shaded outdoor sitting areas, generous parking and pedestrian walking paths. Membership is granted automatically to all owners in the park. Your bylaws state there are three classes of membership consisting of:

- Class A Members which are all owners except D. They are each entitled to one vote per square foot of gross floor area owned.
- The Class B Member which is D and is entitled to ten votes per square foot of gross floor area owned by them;
- The Class C Member which is D and is not considered a part of the voting power. The Class C Member is entitled to select a majority of the members of your Board of Directors until they no longer own any portion of the property.

Moreover, your bylaws indicate that your Board of Directors must either be an owner or an agent of an owner, or an agent of D for so long as D owns any portion of the property. At the first meeting and until D has no ownership rights, D shall appoint two Directors and the members shall elect one Director to the Board.

According to your application, your activities will include:

- Maintaining all common areas of the business park;
- Reviewing proposed construction plans against your design guidelines;
- Enforcing your design guidelines as well as rules and regulations for the business park;
- Invoicing and collecting assessments against property owners related to the common area maintenance and repair.

You submitted your Declaration of Covenants, Conditions and Restrictions and Reservation of Easements (Declaration) which defines "Condominium" as an estate in real property and will consist of an undivided fractional fee simple ownership interest in the common area, together with a separate ownership interest in fee in a unit and all easements, including exclusive use areas, if any.

Furthermore, the Declaration states:

- The units in the business park may be used for any commercial purpose approved by the city which is not a prohibited use as set forth in your Declaration;
- The common area includes, without limitation, the Condominium Buildings (excluding the Units) and the following: parking spaces, drop off/pick up areas, driveways, walkways, exterior lighting, landscaping, information kiosks, common trash receptacles and areas, perimeter and bearing walls, columns, vertical supports, girders, ceiling joists, subfloors, unfinished floors, unfinished walls, roofs, slabs, foundations, foundation membranes, common water and sewer systems, common storm drains, common water heaters, reservoirs, tanks, ducts, flues and chutes, conduits, pipes, plumbing, ventilation systems, wires, and other utility installations required to provide power, telephone, telecommunications, light, gas, heat, water, sewage, drainage, sprinkler pipes and other built-in fire protection devices and equipment, exterior sprinklers and sprinkler pipes, landscaping, poles and signs;
- No vehicle or similar equipment is permitted to remain overnight within the common area, and no noisy or smoky vehicles, or unlicensed motor vehicles, shall be operated on the property;
- You may install a sign at vehicular entrances with a statement that public parking is prohibited and that all vehicles not authorized to park on the property may be removed at the vehicle owner's expense;
- The right of the public to make use of the business park, except for any publicly dedicated portion, is by permission, and subject to control, of the respective owners;
- You and any owner shall have the right to prevent or prohibit the use of the property or Unit for any purpose which is contrary to the operation of a first-class shopping complex.

Your source of revenue are members' assessments. Disbursements are used for the maintenance of common areas.

Finally, you will contract with a local outside property management firm who will perform the overall maintenance as well as be responsible for the invoicing of assessments.

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) 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 that is operated primarily for the purpose of bringing about civic betterments and social improvements.

In Revenue Ruling 74-17, 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. 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.

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.

In Contracting Plumbers Cooperative Restoration Corp. v. United States, 488 F.2d 684 (2nd Cir. 1973), cert. denied, 419 U.S. 827, 95 S. Ct. 47, 42 L. Ed. 2d 52, 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.

In Lake Petersburg Association v. C.I.R., T.C. Memo 1974-55, 33 T.C.M. (CCH) 259, T.C.M. (RIA) 74055 (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.

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 to maintain common areas of a shopping complex including parking spaces, driveways, walkways and exterior lighting. You also provide maintenance for building exteriors including roofs. 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 like the condominium association in Revenue Ruling 74-17. As these benefited as tenants in common from the association's expenditures, so your owner members benefit from your expenditures on the common areas through their undivided ownership interest in the common areas.

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 commercial 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 first-class shopping complex 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 benefiting your members.

Your position

You state that you promote and enhance the growth of healthcare services in the rural, blighted area in which you are located. You state that the region has historically been underserved by the healthcare industry and is currently in desperate need of more healthcare providers.

You also attempt to mitigate the shortage of available medical services in the distressed rural community by providing medical suites that will allow primary care, medical specialties, and surgical centers to easily move in and support the underserved community.

In addition, you state that you will create jobs by having businesses locate within your commercial development.

Our response to your position

You failed to provide any additional information from which it can be concluded that you qualify under Section 501(c)(4) of the Code. Your activities are primarily directed to providing maintenance and related services to the buildings and grounds that are privately owned by your members. Even if you were to show that you substantially benefit the community, you would fail to qualify for exemption because you primarily benefit private interests as illustrated in the court cases Contracting Plumbers and Lake Petersburg.

Conclusion

Based on the information submitted, we conclude that you are not an organization described in Section 501(c)(4) of the Code. Your activities are primarily for the economic benefit of your members, and there is little or no benefit to the community.

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