



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

Number: **201933015**
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: 501.04-00, 501.04-07

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 13, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Number
C = Name
D = Location
X = State
Y = Date

m dollars = Amount

UIL:

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 formed as an X Nonprofit Corporation on Y under the X Nonprofit Corporation Act and the X Condominium Act.

Your Articles of Incorporation indicate that you are organized for the purpose of operating and managing the Condominium and the Condominium property for the use and benefit of the owners. In part, the Articles also indicate you are authorized to:

1. Levy and collect assessments and special assessments when necessary from the owners for common expenses and limited common expenses and to utilize the proceeds of assessments and special assessments in the exercise of your powers and duties;
2. Establish reserves for maintenance, improvements, replacements, working capital, bad debts, obsolescence, and other purposes appropriate to your function;
3. Institute, defend, or intervene in litigation or administrative proceedings in your name on behalf of yourself or two or more owners on matters affecting the condominium property;

4. Regulate the administration, use, maintenance, repair, replacement, and modification of the condominium property;
5. Cause additional improvements to be made to the common elements and limited common elements;
6. Grant servitudes, easements, leases, licenses and concessions through or over the common elements and limited common elements; and
7. Impose and receive payments, fees, or charges for the use, rental, or operation of the common elements and limited common elements, to impose and receive payments, fees, or charges for the use, rental, or operation thereof on those to whom the common elements and limited common elements are allocated.

Your bylaws indicate the following:

- Your members shall consist of the owners of the B condominium units in the C development located at D. Interest of any member and the shares of a member in your funds and assets of as well as membership voting rights cannot be assigned, alienated, sold, transferred, mortgaged, pledged, pawned, encumbered or conveyed in any manor except as an appurtenance to their unit;
- Membership is automatic when someone purchases a unit;
- All members have automatic voting rights.

In addition, the bylaws state that your directors and officers are required to be condominium owners in C. Your officers currently consist of your president, vice president, and secretary treasurer. You are paying your secretary/treasurer m dollars per month and the monthly assessment on their unit as your property manager.

Your Form 1024 indicates that your activities consist of collecting assessments to provide services to the owners of the units in a two-story building and include:

1. Paying for the water, the security lights, the utilities and the trash;
2. Maintaining the landscaping of the common areas;
3. Providing for the upkeep of painting, the parking lot and roofing;
4. Providing for the annual termite inspection and/or treatment; and
5. Paying for the insurance for the outside of your structure.

You provided a copy of your Guidelines for Being a Good Neighbor and Homeowner, which is given to each homeowner. This document explains owners' responsibilities including guest policies, pet policies and restrictions on alternating units.

You are funded by owner assessments; disbursements are for maintenance of common areas.

Finally, upon dissolution your assets, if any, will be divided equally among the B owners.

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 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. 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.

In Rev. Rul. 74-99; 1974-1 C.B. 131, 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 Rancho Santa Fe Association v. U.S., 84-2 U.S.T.C. 9756 (S.D. Cal. 1984), the court held that a homeowner's association representing property owners within an independent community was exempt under IRC section 501(c)(4) despite closing certain recreational facilities for use by the general public. It was reasoned even though the association served the community that existed within Rancho Santa Fe and the facilities were only open for use by members, the association still served to promote the common good and general welfare of the people of the requisite of the community. The court also determined that the Rancho Santa Fe development was an independent community within the meaning of the statute as it was significant in size and self-contained in orientation. The court reasoned that Rancho Santa Fe was not the ordinary residential grouping of tract homes but was an independent community separated geographically from the city of San Diego of which Rancho Santa Fe was a sub-part.

In Flat Top Lake Ass'n v. United States, 9180 (1989 4th Circuit) the Court held that a homeowner's 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 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 and benefit of your members. For example, you are collecting assessments from members to pay for insurance, utilities, water, painting, and other services. In addition, your net assets upon dissolution will be

divided equally among your members. These facts illustrate you are serving the private interests of the member owners, not the people of a community.

Moreover, you do not meet the provisions of Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i) because your activities are focused on providing services and amenities to the B member owners and do not primarily promote civic betterment or social welfare.

You are nearly identical to the organization that was denied exemption in Rev. Rul. 74-17. Like this organization, you are a condominium housing project as defined by state statute. Your owner members benefit from your activities on the common areas through their undivided ownership interest in the common areas. Your members pay assessments which are used to provide for the maintenance of common areas. Like the organization in the revenue ruling, because your activities such as providing landscaping, maintaining parking areas are directed for the benefit of members, you are not operated primarily for the promotion of social welfare.

Contrary to Revenue Ruling 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 B owners. In addition, your activities such as paying for the water, the security lights, and maintaining the landscaping of the common areas, benefit the B owners.

Like the organization in the court case Flat Top Lake Ass'n v. United States, you do not serve a community which bears a reasonable recognizable relationship to an area ordinarily identified as governmental. Rather, the persons you serve are the B owners of condominiums. 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.

Conclusion

Because you operate primarily for the benefit of your members and not for the social welfare or common good of the community in general, you do not qualify for exemption under Section 501(c)(4) of the Code.

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