



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

Number: **202015028**
Release Date: 4/10/2020

Date:
January 16, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL Code: 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:
November 6, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

P = state
R = date
S = housing development
U = city
v = number

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 incorporated in the state of P on R. Your Articles of Incorporation state you will manage, maintain and preserve the residential condominium project, known as S, located within the city of U, and any additional property annexed into S in the future. You promote the health, safety and welfare of the residents of S. You exercise the powers granted to a non-profit mutual benefit corporation. You operate a homeowners association within the meaning of the relevant sections of the P Revenue and Taxation Code.

Your Articles of incorporation also state that you are to be administrated by an association of owners which shall be a non-profit organization, organized under the applicable laws of P, and responsible for the management of common interest development.

There are v condominium units in your development, and therefore you have v members. Your activities consist of collecting and managing the HOA fees for S. Your board is responsible for the overall operational management and supervision, administrative tasks and financial management of S. Activities generally occur on a monthly basis. You also charge management fees that are calculated per square feet of each unit.

Your only sources of financial support are your HOA and management fees. You indicated the fees you collect are used to pay for building services, general and administrative services for your condominium units. Financial statements demonstrate expenses covering building services, such as landscaping and groundskeeping, general and administrative expenses such as legal and accounting, repairs and maintenance such as plumbing and electric, and utilities.

Law

Section 501(c)(4) of the 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 Treas. Reg. Section 1.501(c)(3)-1.

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 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: 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.

Flat Top Lake Ass'n 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.

Application of law

Section 501(c)(4) of the Code provides that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare may be exempt from federal income tax. Treas. Reg. Section 1.501(c)(4)-1 defines social welfare as primarily being engaged in promoting in some way the common good and general welfare of the people of the community. You do not promote the common good and general welfare of the people in the community, but rather promote the interests of the v persons occupying the project that you maintain (S). Your activities are aimed at the maintenance of areas that serve an exclusive, rather than

broad, class of people. An organization that is operated essentially for the private benefit of its members is not primarily engaged in activities for the common good and general welfare of the people of the community. Thus, you are operating for the private interests of your members and do not qualify for exemption under Section 501(c)(4).

The organization described in Rev. Rul. 74-17 failed to qualify for exemption from federal income tax because it was formed solely to provide for the management and maintenance of a condominium housing project. Similarly, you are a condominium project formed to manage and maintain the units within S. Membership fees are used as assessments in covering the everyday expenses for unit owners. Accordingly, you are operating for the private interests of your members and do not qualify for exemption from federal income tax under Section 501(c)(4) of the Code.

Rev. Rul. 74-99, describes the criteria that must be met in order for a homeowners association to qualify for exemption under Section 501(c)(4) of the Code. The Court in Flat Top Lake Ass'n v. United States held that the criteria set forth in Rev. Rul. 74-99 must be met in order for a homeowners association to qualify for exemption under Section 501(c)(4). The criteria require that you must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental. You do not serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental such as a subdivision or township. Rather, the persons you serve are residents of a project, S, located within one defined area of U. While U is a large residential area, you are serving only v units service v members rather than the community at large. Further, the units of S are not available for the use and enjoyment of the general public but are instead privately owned. Because you fail the requirements set forth in Rev. Rul. 74-99 you do not qualify for exemption as a homeowners association under section 501(c)(4) of the Code.

Conclusion

Because you operate only 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