



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

Number: 202021024
Release Date: 5/22/2020

UIL Number: 501.04-00

Date: February 26, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

1120

Tax years:

All

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: December 23, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
C = Date
D = Name
E = Place
F = Law
G = Number
H = Number

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 IRC Section 501(c)(4)? 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 formed to provide for the maintenance, preservation and control of common elements within that certain tract of property, known as the D condominium, located within E, and any other annexed properties and improvements within the D condominium. They also state that you:

- Promote the health, safety and welfare of the general public in the community as well as that you operate a homeowner's association within the meaning of F;
- Are to be administrated by an association of owners who are responsible for the management of common interest development.

Furthermore, the Articles of Incorporation state in the event of dissolution, distribution of assets will be distributed in accordance with each unit's respective proportionate interest in your elements of the condominium.

Your bylaws state that you were formed for the administration, operation, maintenance and management of the D condominium and other improvements within the D condominium intended for the common use and enjoyment of the users of the D condominium. In addition, the D condominium operates as a medical office building, which contains G units.

Your primary activities consist of maintaining the facilities and common elements of the D condominium that are open to the public. You levy and collect assessments against property owners in the D condominium related to the common area maintenance and repair.

Your Master Deed states in part the following:

- You are established as a leasehold condominium form of ownership for your property authorized by your state law.
- Every person or entity who is a record owner of a leasehold title interest in any condominium unit is a member.
- Upon termination of the interest of the condominium unit owner, the membership shall automatically terminate and shall be transferred to the new unit owner succeeding them;
- Each unit owner shall be entitled to vote on all matters put to vote at all meetings of unit owners in accordance with their percentage interest in the common elements.

Your board who is elected from your membership consists of at least H members and is responsible for levying annual common expense assessments and other assessments as needed for promoting the health, safety, and welfare of your members. Assessments are used but not limited to the following:

- Landscaping of general common elements;
- Maintenance, repair and replacement of the common elements or any other common improvements;
- Payment of taxes;
- Various insurance premiums on the common elements;
- All costs and expenses incidental to the operation and administration of your Association and property; and
- Other items as may from time to time be deemed appropriate by your board.

You will compute the annual common expense assessment levied against each unit within the D condominium by generally allocating the general common expenses among all units within the D condominium according to the percentage interest of each unit. Your board will also levy the limited common expense assessment against each unit, which will be allocated among those units only that benefit according to the percentage interest of each unit.

Your sources of revenue are members' dues and assessments. The largest expenses are for security, cleaning and maintenance, insurance, landscaping and grounds keeping, as well as repairs such as those for the elevator, parking lot, plumbing and electrical.

Law:

IRC Section 501(c)(4) 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 provides that in order to qualify for exemption under Section 501(c)(4) of the Code, a homeowners association (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.

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 IRC Section 501(c)(4) 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 who are the unit owners in the D condominium.

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 member owners to maintain common areas of a medical office building including landscaping, plumbing, repair and maintenance as well as provide for security. This illustrates you do not primarily operate to promote civic betterment or social welfare within the meaning of IRC Section 501(c)(4) but for the benefit of the unit owners in the D condominium.

You are like the condominium association in Revenue Ruling 74-17. As the members in the Revenue Ruling 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 are not like the qualifying organization described in Revenue Ruling 75-286. For example, you are providing for the maintenance for private property which you describe as a medical office building. 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 who are owners in the D condominium.

Your position

You assert you serve the community as required in Revenue Ruling 74-99. As a medical office building you serve the medical needs of the community and the residents of and the its surroundings towns. You have filed an amendment to the certificate of incorporation to clarify your purpose is to "promote the health, safety and welfare of the general public within the community" The property is a medical office building. No maintenance is performed on private residences. You are open to the general public who avail themselves of the diverse medical services that are offered at the property.

Our response to your position

You failed to provide any additional information from which it can be concluded that you qualify under IRC Section 501(c)(4). Your activities are primarily directed to providing maintenance to the buildings and grounds that are privately owned by your members. Furthermore, you do not meet the criteria to qualify as a homeowner's association as explained in Revenue Ruling 74-99 because your membership is comprised of units in a condominium development. As explained previously, condominium developments are not described in Section 501(c)(4). Even if you were to show that you substantially benefit the community, you would fail to qualify for exemption because you primarily benefit the private interests of your member owners as explained 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 IRC Section 501(c)(4). Your activities are primarily directed to the private interests of your members unit owners, 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