



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO Box 2508
Cincinnati, OH 45201

Number: **202040009**
Release Date: 10/2/2020

Date: July 7, 2020

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

UIL: 501.04-07

Dear _____ :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(4). 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 the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. 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 call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034

Redacted Letter 4038



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

Date: May 14, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
C = Date
D = Law
E = Name
F = Name
x = Number

UIL:

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 IRC Section 501(c)(4)? No, for the reasons stated below.

Facts

You were incorporated in the state of B as a domestic nonprofit mutual benefit corporation on C. Prior to being incorporated, you operated as an unincorporated association for several years and filed Form 1120. At the time of your incorporation, you completed the online Notice of Intent to Operate under IRC Section 501(c)(4) required by the IRS and paid the required fee. You subsequently have been filing Form 990. You recently filed Form 1024A to be formally recognized under IRC 501(c)(4).

Your Articles of Incorporation state you are formed as an association to manage a common interest development under D and that your primary purpose is to be a Residential Real Estate Management Association to provide for the acquisition, construction, management, maintenance and care of the real and personal property held by you. Your Bylaws state that your purpose is to own, repair, maintain, manage and eventually replace the Common Areas and Common Facilities within the common interest development real estate of E located in the city of F.

Furthermore, the development is a private community with two separate buildings consisting of x individually owned condominium units. There is also underground parking and small landscape areas in the front and back of the buildings and a common area deck/patio area. The property is gated for pedestrian traffic. Your primary

activities consist of providing upkeep and maintenance on the common property in the condominium development including landscaping, exterior painting, stucco and roof repair, as well as wood destroying pest mitigation repair. In addition, you own one of the units as a rental property and use the proceeds to help cover your expenses.

Furthermore, your bylaws indicate that every person or entity who is an owner of a condominium unit automatically becomes a member and your membership is appurtenant to, and may not be separated from, ownership of any condominium which gives rise to your membership. Members pay regular assessments. You have a three-person Board of Directors who are elected to serve staggered terms from among your members in good standing. Only one Member per unit may serve on the Board of Directors at any given time.

You are supported by member's assessments and rental income. Your expenses include outlays for exterior maintenance, landscaping and insurance.

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 IRC Section 501(c)(4) 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, 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 IRC Section 501(c)(4). 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 provides that in order to qualify for exemption under IRC Section 501(c)(4), 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.

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 homeowners association did not qualify for exemption under IRC Section 501(c)(4) 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 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 a condominium development.

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 and exteriors of the buildings. 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.

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 only x owners. In addition, your activities of collecting members assessments and rental income to providing for landscaping, exterior painting, stucco and roof repair, as well as wood destroying pest mitigation repair cannot be considered maintaining common areas for the use and enjoyment of the general public.

You are not like the organization described in the court case Rancho Santa Fe Association v. U.S. You are a condominium association with x members; therefore, you are not a community within the meaning of the statute.

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 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 x members and not for the social welfare or common good of the community in general, you do not qualify for exemption under IRC Section 501(c)(4).

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