



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

Number: **202102010**  
Release Date: 1/15/2021

UIL Number: 501-00.00, 501.03-30, 501.33-00

Date:  
October 20, 2020  
Employer ID number:

Form you must file:

Tax years:

Person to contact:  
Name:  
ID number:  
Telephone:

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)(3). 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.

Because you don't qualify as a tax-exempt organization under IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

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](http://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:  
August 18, 2020  
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = Date  
C = State  
d dollars = Amount  
E = Number

**UIL:**

501.00-00  
501.03-30  
501.33-00

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)(3). 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)(3)? No, for the reasons stated below.

**Facts**

You submitted Form 1023-EZ, *Streamline Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. You attested on Form 1023-EZ that you are organized and operated exclusively to further charitable and educational purposes. You attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of IRC Section 501(c)(3), that your organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that your organizing document contains the dissolution provision required under Section 501(c)(3).

During review of your Form 1023-EZ, detailed information was requested supplemental to your attestations. You were incorporated on B in the state of C. Your Articles of Incorporation state you are formed as a mutual benefit membership corporation with the primary purpose of being a homeowners' association. Notwithstanding any other provisions in your Articles, you are not permitted to carry on activities not permitted to be carried on by a corporation exempt under IRC Section 501(c)(3). According to your Articles, upon dissolution your assets will be dispersed to property owners who have paid their annual Property Owners Association fees.

You submitted a filed copy of the protective covenants for your subdivision, which describes how you operate as a property owners' association and the requirements for the dwelling size and quality of construction for each lot. The covenants also describe the general restrictions for the subdivision which you will enforce.

Enforcement of the covenants shall be by proceedings of law or in equity against all persons violating or attempting to violate any of the covenants.

There will be one voting member per lot owned in good standing. Each property owner within the subdivision will pay a yearly maintenance fee. The maintenance fee will be used for the common grounds, signs and any other improvement not maintained by the city. The maintenance fee levied by you shall be used exclusively for promoting health, recreation, safety and welfare of the residents of the properties, in particular, for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the common properties and the improvements situated on the properties, including, but not limited to the payment of taxes and insurance, repair, replacement and additions and for the cost of labor, equipment, materials, management, and supervision.

If a property owner does not pay the maintenance fee, then the outstanding amount will accrue interest plus the amount of the assessment cost of preparing and filing the complaint. If a judgement is obtained, it will include interest and attorney fee plus the cost of the processing.

You stated that your purpose is to oversee and manage the neighborhood common areas as well as ensure the property owners obey the covenants, as well as any other governing documents. You will hold meetings to discuss the neighborhood and promote neighbors getting to know one another. Meetings generally happen quarterly. All common areas and any future facilities will be for the use of the property owners and their guests.

The source of your revenue is annual homeowners' dues. After the expenses associated with your establishment, you anticipate most of your expenses will be for care of the common area. Based on your dues of d dollars per year and your budgeted annual receipts, you will have approximately E households in your subdivision.

### **Law**

IRC Section 501(c)(3) provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that, in order to be exempt as an organization described in IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or operation of law, be distributed for one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized and operated exclusively for charitable purposes unless it serves a public rather than a private interest.

Revenue Ruling 68-14, 1968-1 C.B. 243, describes an organization determined to be exempt under IRC Section 501(c)(3) because it was operated for charitable purposes by planting trees in public areas, assisting municipal authorities in keeping the city clean, and informing the public of the advantages of its programs.

Rev. Rul. 75-286, 1975-2 C.B. 210, held that a nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefiting the community as a whole as well as enhancing the members' property rights, will not qualify for exemption under IRC Section 501(c)(3) because the organization was organized and operated for the benefit of private interests by enhancing the value of members' property.

Rev. Rul. 78-85, 1978-1 C.B. 150, held that an organization with membership open to the general public that was formed by residents of a city to help preserve, beautify, and maintain a public park located in a heavily trafficked, easily accessible section of the city that was commonly used by citizens of the entire city qualified for exemption under IRC Section 501(c)(3).

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

### **Application of law**

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You have failed to meet both requirements, as explained below.

Your Articles of Incorporation indicates that your purpose is to operate a homeowners' association. You were also formed as a mutual benefit corporation, rather than a public benefit corporation. Additionally, your Articles call for distribution of your assets to your members upon your dissolution. Accordingly, you fail the organizational test because you do not satisfy the requirements stated in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4).

You are operating to provide services which are a substantial benefit to your members. Accordingly, you do not meet the operational test of IRC Section 501(c)(3) because you are not operating exclusively for charitable purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You do not meet the provisions of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because, like the organization described in 75-286, your activities serve to benefit the private interests of your members rather than the public.

You are dissimilar to the organizations described in Rev. Rul. 68-14 and 78-85 in that you are not engaged in preserving or maintaining public property. Rather, your activities serve the private interests of your members.

You are like the organization described in Better Business Bureau of Washington, D.C., Inc. Your operations result in benefit to your members more than incidentally and constitute a substantial non-exempt purpose.

### **Conclusion**

You are neither organized nor operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). You are a mutual benefit corporation, your formation document does not limit your purposes to those described in Section 501(c)(3), and your assets will be distributed to your members upon your dissolution. Additionally, you fail the operational test because you were formed for the private benefit of your members for a substantial non-exempt purpose. Accordingly, you do not qualify for exemption under Section 501(c)(3).

### **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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements