



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

Number: **202110021**
Release Date: 3/12/2021

Date:
December 15, 2020
Employer ID number:
Form you must file:
Tax years:
Person to contact:
Name:
ID number:
Telephone:

UIL: 501.06-00, 501.06-01

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)(6). 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:
October 20, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
C = Date
D = Developer
E = Individual
F = Individual
G = Number
H = Number

UIL:

501.06-00
501.06-01

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

Facts

You incorporated in the State of B on C. Your stated purposes include obtaining, regulating, managing, conducting, and maintaining your property; enforcing covenants, conditions, and restrictions pertaining to your property; and exercising the rights and powers and performing the duties and obligations of a property owners association. In the event of your dissolution, your assets will belong to your members.

Your purpose is to promote commercial lot development within your property in order to increase and maintain business and property values.

Your membership is comprised of the owners of the commercial building lots within your property. You have two classes of members:

- a. One class is all owners and builder members except for your commercial property developer, D. This class is entitled to one vote per lot.

- b. The other class is D, and any owner controlled by your Director, E, or your President, F. F is also the President of D. This class is entitled to three votes.

Your commercial development has G lots. D owns H of the lots and the remaining lots are owned by separate investor owners.

Your activities include managing and enforcing covenants pertaining to your property. You apply your revenues toward the maintenance and upkeep of certain areas. The areas under your purview are the following:

- a. You maintain the detention pond, which you own. The detention pond collects storm water run-off from the commercial lots.
- b. You mow and maintain access points to the commercial property development.
- c. You maintain the streets within the commercial property development. Each commercial lot's property line extends to the middle of the street.
- d. You maintain any signage located on the marquee for development.
- e. You maintain the landscaping, including the maintenance of any water sprinkler system.

You receive fees from members from annual dues, special assessments, charges levied against individual owners to reimburse you for costs incurred to cure an owner's covenant violation, fines and late fees. You state the fees will be used, "for the purpose of promoting the recreation, health, safety, and welfare of the Members, and in particular, for the improvement, maintenance, and operation of the Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas by the Members."

Law

IRC Section 501(c)(6) provides exemption from federal income tax for business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(6)-1 states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

In Revenue Ruling 71-175, 1971-1 C.B. 153, a nonprofit organization whose principal activity is the operation of a telephone answering service for members is not exempt under IRC Section 501(c)(6). By providing a telephone answering service, the organization relieves the individual members of the necessity of securing this service commercially, resulting in a convenience or economy in the conduct of business of its individual members. Therefore, the organization is rendering particular services for individual persons as distinguished from the improvement of business conditions generally.

In Rev. Rul. 73-411, 1973-2 C.B. 180, a shopping center merchants' association whose membership is restricted to and mandatory to the tenants of a one-owner shopping center and their common lessor, and whose activities are directed at serving the business interests of its members, does not qualify as a business league or chamber of commerce under IRC Section 501(c)(6). The organization serves in part as a means for communication and exchange of views between the owner and the tenants of the center respecting matters relating to their tenant-owner relationship, and in part as a cooperative or governing body for developing and enforcing rules respecting the maintenance and policing of the shopping areas, walkways and parking areas, hours of business, and similar matters of common concern to the tenants and the owner. Income of the organization is primarily from membership dues. The organization was shown not to qualify as a chamber of commerce nor as a business league. "Neither the compulsory membership feature of the present organization nor the fact that its membership is determined without reference to any geographical or political community in the usual sense is characteristic of such organizations." Further, because of the restricted nature of the membership, the organization lacks the essential element of public representation with respect to its membership and the 'community' it purportedly serves.

In Rev. Rul. 78-225, 1978-1 C.B. 159, a non-profit organization that is operated to promote the common business interests of its members, a majority of whose businesses are located in one particular shopping center, has a voluntary membership open to all businesses in a neighborhood community, and is not concerned with landlord-tenant matters relating to the shopping center qualifies for exemption under IRC Section 501(c)(6). This organization is distinguished from the one described in Rev. Rul. 73-411 because this organization has a voluntary membership and is not concerned with tenants' matters. Further, although a majority of its members' businesses are located in one particular shopping center, this organization is operated to improve, within the meaning of Treas. Reg. Section 1.501(c)(6)-1, the business conditions of a community rather than a single one-owner mall.

In Indiana Retail Hardware Assn., Inc. v. United States, 177 Ct. Cl. 288 (1966), the Court held that when conducting particular services for members is a substantial activity of an organization, the organization will be precluded from exemption under IRC Section 501(c)(6). Over 58 percent of the organization's total income was derived from its performing particular services for individuals as convenience and economy in their businesses and from its other income-producing activities.

In MIB, Inc. v. Commissioner of Internal Revenue, 734 F.2d 71 (1986), an organization whose membership consisted of insurance companies was denied exemption as a business league under IRC Section 501(c)(6). The principal activity carried on by MIB was the maintenance and operation of a computerized system for compiling, storing and distributing information about applicants for life insurance. MIB argued that its activities created a deterrent to fraud which created benefits to the industry through reduced investigation expenses and reduced losses due to misclassification of applicants. The Court held MIB's activities by their nature consisted of rendering particular services for individual member companies and served to benefit the individual members' businesses. The Court also stated that even though the services produced various indirect and intangible benefits for the industry as a whole, the fact remained that the rendered services were in form and substance particular services for individual member companies.

Application of law

You are not described as exempt in IRC Section 501(c)(6) because your membership is not comprised of persons having a common business interest as described in Treas. Reg. Section 1.501(c)(6)-1. Your activities

consist of funding property maintenance services for your individual members, which does not improve business conditions for one or more lines of business.

You are similar to the non-qualifying organization described in Rev. Rul. 71-175 because you provide particular services to your members, which aid in the individual operation of their businesses through convenience or economy. Each of your services provides direct benefit to the individual commercial property owners. Your sources and utilization of revenues are also similar to the instant organization, as you are funded by membership dues and certain additional fees and assessments which are used for operating expenses.

You are similar to the non-qualifying organization described in Rev. Rul. 73-411. You are a commercial property owners' association, whose membership is compulsory to owners in a certain development and restricted to all others. Your membership does not represent a "community in the usual geographical or political sense," nor does it "serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry." Thus, your membership does not parallel that of a chamber of commerce or a business league. Your activities consist solely of dealing with matters related to a commercial property development, as well as funding and managing maintenance of such. Your activities only serve the interests of the members and owners in the operation of their individual businesses.

You are dissimilar from the qualifying organization described in Rev. Rul. 78-225. While that organization's membership was voluntary and open to all businesses in a neighborhood community, your membership is compulsory to owners of a certain commercial development and restricted to all others. While the qualifying organizations activities are directed at the improvement of business conditions in general, your activities are directed toward improvement of conditions for your members' properties only.

You are like the non-qualifying organizations described in Indiana Retail Hardware Assn. and MIB, Inc., because all of your activities constitute performance of services for members.

Conclusion

Based on the information provided, you do not qualify for exemption under IRC Section 501(c)(6). Your membership is limited to those who own property in a particular commercial development. You were formed to perform particular services for your members for their convenience. Thus, you do not qualify for exemption under Section 501(c)(6).

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