



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

Number: **202128009**
Release Date: 7/16/2021

UIL Number: 501.04-00; 501.04-07

Date: April 20, 2021

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)(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: February 17, 2021

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = State

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

Facts

You were incorporated on B in the state of C as a domestic nonprofit mutual benefit corporation.

Your Articles of Incorporation state that your purposes are:

“to be and constitute the Association to which reference is made in the Master Deed, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified in the Master Deed and the By-Laws, and as provided by law; and to provide an entity for the furtherance of the interest of the Owners.”

You further described your purposes as being formed “to maintain common areas and property.” You are a recreational vehicle park established for tailgating at athletic events, primarily football, for the _____ C.

In the section describing your members, your Articles of Incorporation state that:

“The Association shall be a membership corporation without certificates or shares of stock. The Owner of each Unit shall be a Member of the Association and shall be entitled to vote in accordance with the terms of the Master Deed and the By-Laws. The manner of exercising voting rights shall be as set forth in the Master Deed and in the By-Laws of the Association.”

You have D individual property owners, comprising D units, therefore there are D members all having the same type of membership and voting rights. Each member has one vote. Members have access to all common areas. You are primarily supported by members' assessment fees, or dues, and these funds are used to maintain the common areas.

Common areas include a pavilion and dog walk area. Maintenance includes mowing and minimal landscaping. The park is fenced with gated entry accessed via an entry code or remote, therefore the park area is inaccessible to the public. Access is limited to lot owners and their guests. You provided additional information that "during weekends of high occupancy the gates are locked open which allows access for non-owners."

You indicated that all activities are for the common benefit of the whole development rather than for individual lot owners. You described how members have sponsored events that reach beyond the lot owners and your association. Members have supported Halloween trick-or-treat events for the children of tailgating fans; as a group you have volunteered to assist in serving Thanksgiving meals to the homeless; and you have conducted fundraising drives to support other non-profits that fund programs that will help educate, advocate, and destigmatize mental illnesses of student athletes.

You were formed by a developer that later turned full responsibility of managing the association over to you. You are managed by a Board of Directors. The number, terms, and election of the Board of Directors is explained in your By-Laws.

Your Initial Rules and Regulations indicate that recreational vehicles "may only occupy a site for days during any day period; provided, however that up to days per year an RV may be left in Storage Mode, which shall not count as part of the days out of days occupancy."

Your Articles of Incorporation indicate that upon dissolution, as a mutual benefit corporation, your remaining assets will be distributed to your members, or if you have no members, to those persons to whom the corporation holds itself out as benefiting or serving.

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.

Revenue Ruling 72-102, 1972-1 C.B. 149, describes an organization formed by a developer as a membership organization and operated to administer and enforce covenants for preserving the architecture and appearance of

a housing development, and to own and maintain common green areas, streets, and sidewalks for the use of all development residents. Its activities are for the common benefit of the whole development rather than for individual residents or the developer, and so the organization was determined to qualify for exemption under IRC Section 501(c)(4).

Revenue Ruling 74-99, 1974-1 C.B. 131, modified Rev. Rul. 72-102 and held that a homeowners association, in order to qualify for exemption under IRC Section 501(c)(4), must, in addition to otherwise qualifying for exemption under Section 501(c)(4), satisfy the following requirements: (1) It must engage in activities that confer benefit on a community comprising a geographical unit which bears a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof; (2) It must not conduct activities directed to the exterior maintenance of private residences; and (3) It owns and maintains only common areas or facilities such as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public and is not restricted to members of the homeowners' association.

Revenue Ruling 80-63, 1980-1 C.B. 116, to clarify Rev. Rul. 74-99, describes specific questions that have been raised regarding qualifying homeowners' associations, as follows:

The first question asks, does Rev. Rul. 74-99 contemplate that the term "community" for purposes of IRC Section 501(c)(4) embraces a minimum area or a certain number of homeowners?

The answer is "no" because Rev. Rul. 74-99 states that it was not possible to formulate a precise definition of the term "community." The ruling merely indicates what the term is generally understood to mean. Whether a particular homeowners' association meets the requirements of conferring benefit on a community must be determined according to the facts and circumstances of the individual case. Thus, although the area represented by an association may not be a community within the meaning of that term as contemplated by Rev. Rul. 74-99, if the association's activities benefit a community, it may still qualify for exemption. For instance, if the association owns and maintains common areas and facilities for the use and enjoyment of the general public as distinguished from areas and facilities whose use and enjoyment is controlled and restricted to members of the association then it may satisfy the requirement of serving a community.

The second question asks, may a homeowners' association, which represents an area that is not a community, qualify for exemption under IRC Section 501(c)(4) if it restricts the use of its recreational facilities, such as swimming pools, tennis courts, and picnic areas, to members of the association?

The answer is "no" because Rev. Rul. 74-99 points out that the use and enjoyment of the common areas owned and maintained by a homeowners' association must be extended to members of the general public, as distinguished from controlled use or access restricted to the members of the association. For purposes of Rev. Rul. 74-99, recreational facilities are included in the definition of "common areas."

In Rancho Santa Fe Association v. United States, 589 F. Supp. 54, (S.D. Cal. 1984), the Association's request for affirmation of exempt status under IRC Section 501(c)(4) was granted by the Court. The facts are that the Association consists of 6,100 acres of property, 600 acres of which is owned by the Association and the rest by members who are property owners. Of the 600 acres owned by the Association, 465 acres are dedicated to parkland and open space, playgrounds, athletic fields, a public parking lot, a community clubhouse, and hiking

and bridle trails, which are all open to the public. The remaining 135 acres comprise an 18-hole golf course and eight tennis courts which are only available to members. The Association oversees the governance of the property, furnishes private security protection, and functions as a liaison between the community and the Board of Supervisors on issues which require the participation of larger governmental entities, such as maintenance of the rights-of-way and the sanitation system. Finally, the Association serves the community in loaning out its facilities free of charge to various public service organizations as well as to the schools. The court decided that, "It performs the functions of a governmental entity and brings about civic betterments and social improvements that would be sorely missed by the Rancho Santa Fe community should they be lost or curtailed."

In Flat Top Lake Association, Inc. v. United States, 868 F.2d 108 (4th Cir. 1989), 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.

In Indian Lake Property Owners Association, Inc. v. Director of Revenue, 813 S.W.2d 305 (1991), the Supreme Court of Missouri held that: (1) a homeowners' association that enforced subdivision covenants, maintained subdivision roads, and provided security and trash collection services to residences within the subdivision was not a "civic organization" entitled to sales and use tax exemption, and (2) to qualify as a "civic organization," an organization's purposes and functions must be concerned with and relate to citizenry at large. Further, the judge discusses Flat Top Lake within the text, stating, "Clearly Congress believed that an organization cannot serve social welfare if it denies its benefits to the general public. Implicitly, Congress recognized that a true "community" functions within a broader national fabric. Service to such a community thereby furthers the national interest by expanding potential, by opening opportunities to all citizens who may find themselves within the bounds of that particular community."

Application of law

You are not described in IRC Section 501(c)(4) and Treas. Reg. Section 1.501(c)(4)-1. Although you claim to be open to the general public, all of your common areas and facilities, the pavilion, and dog walk area, are enclosed within a gated property. You have a single-point gated entry. Access to the property and all of the amenities are restricted to members of the association and their guests. The general public does not have unrestricted access to your development.

You are similar to certain aspects of the organization described in Rev. Rul. 72-102. You were formed by a developer and you are operated to administer and enforce covenants for preserving the appearance of your development. You own and maintain common areas for use of all property owners. However, your activities are not directed to the general public as required for exemption from federal income tax under IRC Section 501(c)(4). You restrict access as well as provide services that benefit member property owners.

You do not meet the requirements of qualifying social welfare organizations described in Rev. Rul. 74-99 and Rev. Rul. 80-63 where the general public significantly benefited from the operations of the organizations. You restrict the general public from access to your facilities, thereby failing to confer a benefit onto the community. Where there is failure to serve the community, there is a failure to promote social welfare, which is a requirement for an organization to be described under IRC Section 501(c)(4). An organization exempt under Section 501(c)(4) must operate "exclusively for the promotion of social welfare" which is further explained by the associated Regulations, thus being primarily engaged in promoting in some way the common good and general welfare of the people of the community. Rev. Rul. 74-99 confirms that the benefit must be conferred to

“the community.” Rev. Rul. 80-63 clarifies Rev. Rul. 74-99 stating that while a “community” cannot be strictly defined, the association is not serving a community if areas and facilities are controlled and restricted to members of the association rather than members of the general public. The security gates to your fenced-in property and the fact there is a single-point entry exclude the general public from entering the property. Excluding the public does not conform to the definition of an IRC Section 501(c)(4) organization. Non-members are generally only granted access when the gate is left open during weekends of high occupancy.

Unlike the qualifying social welfare organizations described in Rev. Rul. 74-99 and Rev. Rul. 80-63, your activities do not serve the general public. You do not operate in a way that significantly benefits the surrounding community, as required by IRC Section 501(c)(4) and explained in Rev. Rul. 80-63. Unless members of the general public are coming onto the property during weekends of high occupancy, you do not provide unrestricted access to the pavilion and dog walk areas.

You are similar to the organizations described in Flat Top Lake Association and Indian Lake Property Owners Association, wherein the general public did not significantly benefit from the activities of the organizations. You are not similar to the organization described in Rancho Santa Fe Association, which performed functions of a governmental entity and brought about civic betterments and social improvements.

Court documents for Indian Lake Property Owners Association state that an organization “cannot serve social welfare if it denies its benefits to the general public.” Clearly, you are denying benefits to the public by having a locked gate that restricts public access. Similar to the Indian Lake Property Owners Association case, you are denying your benefits to the public. The usage of the property by guests who are permitted to enter is minimal and incidental.

You are not similar to the organization described in the Rancho Santa Fe Association case. For example, you do not provide vast amounts of parkland, open space, facilities, and equipment to the public. You only provide the usage of your pavilion and dog walk area to members and guests. You have a single-point entry to your grounds. Members of the general public are allowed access only during weekends of high occupancy. Unlike Rancho Santa Fe Association, all of your amenities are not primarily available to the local community beyond your members and their guests. Based on the facts, you are not a community such as the one in Rancho Santa Fe Association and this precludes you from tax exemption under IRC Section 501(c)(4).

Your position

You provided Rev. Rul. 72-102 as the basis for your application for tax-exempt status. You indicated that you are similar to the organization described in Rev. Rul. 72-102 because you were created by a developer like the organization described in the ruling. You claim that:

“Annual assessments are used exclusively by the association for operating costs and expenses incurred by the association and as such should be considered exempt function income. No Director or officer of the association is paid for any work done in their capacity as an officer or director of the association. All activities are for the common benefit of the whole development rather than for individual residents.”

You provide that you serve a “community” greater than just the members of your association because the other tailgaters and their friends who take part in your activities are not lot owners. You indicated that the gating is

for security and protection of the recreational vehicles for when owners are not onsite. During weekends of high occupancy the gates are locked open which allows access for non-owners.

You indicated that you have increased the safety and welfare of a larger community by providing a safe place to house your recreational vehicles rather than parking along public roads and parking lots near and around the
C.

You believe that your recreational vehicle park constitutes a “community” as explained in Rev. Rul. 72-102.

Our response to your position

Treas. Reg. Section 1.501(c)(4)-1 states, “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.” Your organization is a recreational vehicle park that serves the interests of your lot owners and their guests. Your common areas are enclosed by a fence that has a gate that is locked for security purposes. You do not extend your facilities to the general public. Your Initial Rules and Regulations indicate that recreational vehicles “may only occupy a site for 90 days during any 120 day period,” therefore you are not a bona fide homeowners’ association. You have failed to demonstrate that your operations promote in some way the common good and general welfare of the people of the community.

Conclusion

Based on the information submitted, we conclude you are not described within IRC Section 501(c)(4) because you are not operated exclusively for the promotion of social welfare and your net earnings inure to the benefit of your association members.

Likewise, you do not meet the requirements of Treas. Reg. Section 1.501(c)(4)-1 because you are not primarily engaged in promoting the common good and general welfare of the people of the community.

The common areas of your property are enclosed in a fenced and gated property. Only your members and their guests are permitted to enter and use the amenities. Any use by the public during times of high occupancy is incidental to the overall operations of your organization. The public is thereby restricted from accessing the common areas of your property, which does not primarily further the exempt purpose of an organization exempt 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