



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

Number: **202130015**
Release Date: 7/30/2021

UIL Number: 501.04-00; 501.04-07

Date: May 5, 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.

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.

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: March 9, 2021

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

w dollars = Dollar Amount
X = State
Y = Date
Z = Condominium Name

UIL:

501.04-00
501.04-07

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (IRC). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(4) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issue

Do you qualify for exemption under IRC Section 501(c)(4)? No, for the reasons stated below.

Facts

You were formed as an X Nonprofit Corporation on Y as Condominium Association.

Your purpose as stated in your articles of incorporation is to provide for the maintenance, preservation, and control of the common property within the condominium development know as Z. Z was established by the declaration of covenants, restrictions, easements and liens for condominium and to promote the health, safety and welfare of the property owners of Z.

The Bylaws state that members shall consist exclusively of all owners and no other person shall be entitled to membership. A person will automatically become a member of the association at the time they acquire legal title to the unit. Owners will not be permitted to resign from membership in the association prior to the time at which the owner transfers title of the unit to another. No membership may be transferred in any way except as an appurtenance to the transfer of title of the unit to which the membership pertains. Each unit will have the right to cast _____ vote at any meetings of the association. No unit owner may exempt themselves from liability for their contribution toward the general common expenses and/or limited common expenses by waiver of the

use or enjoyment of any of the common elements and/or limited common elements or by abandonment of their unit.

The executive board holds the following powers:

You have stated the condominium has a metal fence to restrict the public from entering the building. That none of your services serve the neighborhood, subdivision, housing, development or other type of area. The property the association manages is owned by all the homeowners.

Law

IRC Section 501(c)(4) reads:

(a) Exemption from taxation. An organization described in subsection (c) or (d) or Section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under Section 502 or 503. The following organizations are referred to in subsection (a): (4) (A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes. (B) Subparagraph (A) 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 reads:

(a) Civic organizations--(1) In general. A civic league or organization may be exempt as an organization described in Section 501(c)(4) of the Code if: (i) It is not organized or operated for profit; and (ii) It is operated exclusively for the promotion of social welfare. (2) Promotion of social welfare--(i) In general. 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 which is operated primarily for the purpose of bringing about civic betterments and social improvements.

Rev. Rul. 69-280, 1969-1 C.B. 152, holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt from federal income tax under IRC Section 501(c)(4).

In rev. Rul. 74-17, 1974-1 C.B. 130, the Service stated that the nature and structure of a condominium system of ownership (rights, duties, privileges, and immunities of the members of an association of unit owners) derive from, and are established by, statutory and contractual provisions, and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property in the condominium. In addition, condominium ownership involves the maintenance and care of many common areas which necessarily constitutes the provision of private benefits for unit owners.

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.

In Rev. Rul. 80-63, 1980-1 C.B. 116, the Service iterated the point that a homeowners' association that does not represent a community cannot restrict the use of its facilities and be exempt under IRC Section 501(c)(4).

In Flat Top Lake Association 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) of the Code 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

IRC Section 501(c)(4) of the Code provides that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes and no part of the

net earnings of such entity inures to the benefit of any private shareholder or individual may be exempt from federal income tax.

Treasury Regulation Section 1.501(c)(4)-1 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 which is operated primarily for the purpose of bringing about civic betterments and social improvements and is not an action organization as set forth in paragraph (c)(3) of Treas. Reg. Section 1.501(c)(4)-1.

You are not similar to organizations described in IRC Section 501(c)(4) of the Code and Treas. Reg. Section 1.501(c)(4)-1 that promote social welfare. By virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of their property in the condominium. In addition, condominium ownership necessarily involves ownership in common by all condominium unit owners of a great many common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners. Therefore, you are not primarily engaged in promoting in some way the common good and general welfare of the people of the community and are not operated exclusively for the promotion of social welfare.

You are similar to the organization described in Rev. Rul. 69-280, in that you provide for the maintenance of common areas of the whole building that contains the members units.

You share many of the attributes described of a condominium association in Rev. Rul. 74-17. Your owners have ownership rights as well as other duties, privileges, and immunities derived from statutory and contractual provisions. Your activities involving the maintenance and care of many areas which necessarily constitutes the provision of private benefits for unit owners.

You are not similar to the organization in Revenue Ruling 74-99 where the general public significantly benefited from the organization's operations. 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) of the Code. An organization exempt under Section 501(c)(4) must operate "exclusively for the promotion of social welfare" which is further explained by the Regulations thus: being primarily engaged in promoting in some way the common good and general welfare of the people of the community. Revenue Ruling 74-99 confirms that the benefit must be conferred to "the community". Access to the building is restricted to the owners and their guests and the owners are responsible for the actions of their guests. Unlike the organization in Revenue Ruling 74-99 your activities do not serve the general public.

As you do not represent a community and you restrict the use of your facilities to your member/owners, you are not described in IRC Section 501(c)(4).

You are similar to the organizations in Flat Top Lake Association, supra and Indian Lake Property Owners Association, supra, where the general public did not significantly benefit from the activities of the organizations.

The lack of public benefit is closely aligned with those as seen in Flat Top Lake v. U.S.A., supra. You limit the common facilities to members and their guests. As stated in Flat Top, the organization "operates for the exclusive

benefit of its members and does not serve a 'community' as that term relates to the broader concept of social welfare." The courts denied exemption to these aforementioned organization. Following similar fact patterns, tax-exempt status should also be denied.

Conclusion

Since the organization's activities are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare. Accordingly, it does not qualify for exemption from Federal income tax under section 501 (c) (4) of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts 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 he or she hasn'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 provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office 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 at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement 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 he or she received it.

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.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure: