



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

Date:
07/25/2022
Employer ID number:

Person to contact:

Number: **202242023**
Release Date: 10/21/2022

UIL: 501.00-00, 501.03-00, 501.03-30, 501.33-00

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.

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 Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 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:
Letter 437
Redacted Letter 4034
Redacted Letter 4038



Department of the Treasury
Internal Revenue Service
PO Box 2508
Cincinnati, OH 45201

Date: 05/31/2022

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date

C = State

D = Number

F = Date

G = Act Name

UIL:

501.00-00

501.03-00

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, on F.

You attest that you were incorporated on B, in the state of C. 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 the 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).

You attest you are organized and operated exclusively to further charitable purposes and that you have not conducted and will not conduct prohibited activities under Section 501(c)(3).

You attest that you are organized and operated exclusively to further charitable purposes. You attest that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). Specifically, you attest you will:

Letter 4034 (Rev. 01-2021)
Catalog Number 47628K

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially
- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s)
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

You stated on the Form 1023-EZ that your most significant activity is to operate a small homeowners association of D units.

Detailed information was subsequently requested. Article 2 of your Articles of Incorporation states you are a non-profit mutual benefit corporation formed under the G Act. Article 6a states your specific purpose is to operate and manage a homeowners association. Your Articles of Incorporation make no specific provisions for your remaining assets in the event of the dissolution of your corporation.

You have submitted a copy of your Declaration of Covenants, Conditions and Restrictions and Reservation of Easements (Declaration). You desire to create a common interest development as a "condominium project" consisting of up to D units. You are formed for the purpose of excising the power and functions of the Declaration to enhance and protect the value of the properties. All persons who acquire units shall automatically become members.

You are a gated community, and your common area includes a driveway to get into your community, walls, mailboxes, lighting, and lawn. Your activities include collecting, depositing, and tracking regular and/or capital improvement assessments. You are responsible to pay gardening, utility, and insurance bills. You purchase supplies for necessary repairs and hire contractors as needed.

Assessments are your only revenue stream. Your regular assessment is determined by the actual and estimated cost of maintenance, management, operation, repair and replacement of property, facilities and private on-site sewer system serving your homeowners. Capital improvement assessment may be collected from time to time for authorized installation or construction of any capital improvements. Your expenses consist of gardening, utilities, insurance, management fees, and professional services.

You filed Form 1120-H, U.S. Income Tax Return for Homeowners Associations in the past. You have stated there are no changes in your operation and the submission of Form 1023-EZ was a mistake.

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 or 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 to 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.

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). Rev. Rul. 78-85 distinguished Rev. Rul. 75-286.

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.

In Columbia Park and Recreation Association, Inc. v. C.I.R., 88 T.C. 1 (1987), the organization was formed to develop and operate utilities, systems, services, and facilities for the common good and the social welfare of the homeowner's association within the planned community. The Tax Court found that the majority of services and facilities were only offered to association members, with only a small fraction of those services actually offered to the general public. Also, the organization's Articles do not limit its purpose to an exempt purpose within the meaning of IRC Section 501(c)(3), expressly permit the organization to serve a substantial nonexempt purpose,

and the assets are not dedicated to an exempt purpose. The Tax Court held that the organization was not organized or operated as charitable within the meaning of Section 501(c)(3).

Application of law

IRC Section 501(c)(3) set forth two main tests for qualification for exempt status. As stated in Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). Failing either test adversely affects qualification for exemption. You fail to meet both requirements, as explained below.

Organizational Test

Your Articles of Incorporation state that your purpose is to operate and manage a homeowners association. You were also formed as a mutual benefit corporation, rather than a public benefit corporation. Additionally, your Articles contain no provision on assets distribution upon your dissolution. As a result, you have not satisfied the organizational test described in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4).

You are like the organization described in Columbia Park and Recreation Association, Inc. You are organized for a purpose not exclusively limited to an IRC Section 501(c)(3) purpose and do not have a dissolution clause that dedicates the assets to further exempt purposes. Therefore, you fail the organizational test described in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4).

Operational Test

Your activities of managing the common interest development of a D-unit community and collecting assessments from owners to maintain the common area provide direct benefits to private individuals. Therefore, you are not operating exclusively for exempt purposes as described in 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 Rev. Rul. 75-286, your activities serve to benefit the private interests of your members rather than the public.

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

You are like the organization described in Columbia Park and Recreation Association, Inc. You serve only the private interest of your members and, therefore, fail the operational test described in Treas. Reg. Sections 1.501(c)(3)-1(d)(1)(ii).

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

Based on the information submitted, you are not organized and operated exclusively for exempt purposes with the meaning of IRC Section 501(c)(3). Rather, you are organized and operated primarily for the private interest of your members. Therefore, 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 Determination 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
PO 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