



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

Date:  
08/07/2023  
Employer ID number:

Tax years:  
All  
Person to contact:

Release Number: 202344018  
Release Date: 11/3/2023  
UIL Code: 501.04-06

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](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 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:  
June 5, 2023  
Employer ID number:

Person to contact:  
Name:  
ID number:  
Telephone:  
Fax:

**Legend:**

L = date  
M = state  
N = area  
P = number

UIL:  
501.04-06

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 formed as an unincorporated association on L under the laws of M. Your purpose as stated in your Bylaws is to maintain a pier and protect rights of the pier Association to be peaceful use and enjoyment of that certain lot N.

You formed an association and now collect yearly dues to pay for the sole purpose of repairing and maintaining the pier. Membership consists of the P non-waterfront property owners – only these individuals can be members. Only members or their accompanied guests are permitted to use the pier for fishing, loading and unloading watercraft. You have stated this promotes the common good and general welfare of the common areas leading up to the pier as well as the pier itself.

**Law**

IRC Section 501(c)(4) provides for the exemption from Federal income tax of 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. Section 501(c)(4) of the Code provides, in part, for the exemption from Federal income

tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Treasury Regulation Section 1.501(c)(4)-1(a)(2)(i) states 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 betterment and social improvements.

Revenue Ruling 74-99, 1974-1 C.B. 131, held that a homeowners association, to qualify for exemption under section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public; association of such areas as roadways and parklands, sidewalks and streetlights, access to, or the enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners association.

Revenue Ruling 78-132, 1978-1 C.B. 157, states a community cooperative organization formed to facilitate the exchange of personal services among members, including home maintenance, minor repairs, and transportation, was operating primarily for the private benefit of its members and wasn't exempt from tax as a social welfare organization under IRC Section 501(c)(4).

In Flat Top Lake Ass'n v. United States, 868 F.2d 108 (4<sup>th</sup> Cir. 1989), the Court held that a homeowners association did not qualify for exemption under 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**

You are not described under IRC Section 501(c)(4) or Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i) because your only activity is gathering funds for the repair and maintenance of a pier for property owners. As this serves the interests of only your members and not the community at large this does not further or promote social welfare purposes.

You are similar to the organization described in Revenue Ruling 78-132 in that you have formed a cooperative to facilitate the maintenance of your property owner's pier. This is a service to only your members; by operating primarily for the private benefit of your members you do not meet the qualifications of a social welfare organization under IRC Section 501(c)(4).

Rev. Rul. 74-99 describes the criteria that must be met in order for a homeowner's association to qualify for exemption under IRC Section 501(c)(4). The Court in Flat Top Lake Ass'n v. United States held that the criteria set forth in Rev. Rul. 74-99 must be met in order for a homeowner's association to qualify for exemption under Section 501(c)(4). One of these criteria is that facilities you own or maintain must be for the use of the public rather than being restricted in use. You currently have a pier restricted in use to the property owners in your association. The dues you collect are dedicated to the maintenance and upkeep of this pier. This pier is only available to members or their guests. You are serving the private interests of your property owners through the maintenance of this pier. An organization that operates for the exclusive benefit of its members does not serve a

"community" as that term relates to the broader concept of social welfare. Because you fail the requirements set forth in Rev. Rul. 74-99 and Flat Top you do not qualify for exemption under Section 501(c)(4).

### **Conclusion**

Because you operate only for the benefit of your members and not for the social welfare or common good of the community in general, you do not qualify for exemption 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 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](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