



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

Date:
11/06/2023
Employer ID number:

Form you must file:
1120

Tax years:
All

Person to contact:

Release Number: 202405010

Release Date: 2/2/2024

UIL Code: 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 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: 08/23/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = State of Formation

C = Date of Formation

D = Units

E = Merchants

UIC:

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 are a corporation formed on C under the laws of the state of B. You operate a commercial real estate rental condominium association. Your Articles of Incorporation indicated the purposes for which you were formed are:

- (1) To own, operate, lease, sell, trade and otherwise deal with such real and/or personal property as may be necessary and/or convenient in the administration of said Condominium.
- (2) To provide an entity for the furtherance of the interest of the owners of Units in the Condominium.
- (3) To fix and to collect assessments or other charges to be levied against the Properties.
- (4) To manage, control, operate, maintain, repair, and improve the Common elements and Properties, and property subsequently acquired by the Association, or any property owned by another, for which the Association, by rule, regulation, Declaration, or contract, has a right or duty to provide such services.
- (5) To enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under any Declaration or Bylaws.

- (6) To engage in activities which will foster, promote, and advance the common interests of all owners of units at the development.

Your Bylaws state the qualifications for membership as, “The members of the association shall be persons, partnerships, firms, corporations, or entities who are owners, legal or equitable, of Units in the Community.”

You were formed to manage, operate, maintain, repair, and improve the common elements and properties of the condominium development. There are D condominium units comprising E merchant stores. The public uses the facilities to obtain goods and services from tenants and the area is situated as and resembles a shopping center.

You provided the following description of your activities:

- Providing preservation of the appearance, values, and amenities of the property
- Managing assessments, owning and maintaining, repairing and replacing the general common areas of the property and repairing common areas,
- Providing, purchasing, acquiring, owning, replacing, improving, maintaining and/or repairing such real property, structures, streetlights, landscaping, paving or other improvements accepted by you.
- Operating without profit for the sole and exclusive benefit of your members
- Any services/activities will be provided at the Center by the Association President, typically through contractors (refuse removal, lawn maintenance, snow removal, parking lot maintenance, etc.)

Your financial information shows you are supported solely by membership fees. Your expenses include road maintenance, outside signs and lighting, property insurance, real estate taxes, landscaping, refuse collection, reserve for road resurfacing and resealing, and legal, accounting and management.

Law

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

Treasury Regulations 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.

Revenue Ruling 59-234, 1959-2 C.B. 149, held that a real-estate board whose primary purpose or activity is the operation of a multiple-listing system is considered to be rendering particular services for its members as a convenience and economy in the conduct of their respective businesses, rather than for the improvement of business within the real estate business generally, and is not exempt from Federal income tax as an organization

described in IRC Section 501(c)(6). The ruling further concluded that the operation of a real estate multiple listing service constitutes a business of a kind ordinarily carried on for profit.

Rev. Rul. 68-264, 1968 1 C.B. 264 defines a particular service for the purposes of IRC Section 501(c)(6) as being an activity that serves as a convenience or economy to the members of the organization in the operation of their businesses.

Rev. Rul. 73-411, 1973 2 C. B. 180, held that exemption under IRC Section 501(c)(6) was denied to a shopping center merchants' association whose membership is restricted to, and required of, the tenant of a one owner shopping center and their common lessor, and whose activities are directed to promoting the general business interests of its members.

In Apartment Operations Ass'n v. Commissioner of Internal Revenue, 136 F.2d 435 (1943), the court determined that the organization was not exempt from tax as a business league. The organization was made up of apartment owners. It did not meet the description of a business league because it regularly carried on business of a kind ordinarily conducted for profit. It performed particular services for individual persons such as the furnishing of credit information, the supplying of an apartment shopping service, the making of arrangements for direct purchases by members at discount, and similar activities.

In Indiana Retail Hardware Assn., Inc. v. United States, 366 F. 2d 998 (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% 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.

Application of law

IRC Section 501(c)(6) provides exemption for organizations organized as business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues. As demonstrated in your Articles of Incorporation, you are not organized for any of the purposes described in IRC Section 501(c)(6). You are not a business league as described in IRC Section 501(c)(6) because you are not organized to improve business conditions of one or more lines of business, and you were formed to provide particular services to your members.

You are not described in Treas. Reg. Section 1.501(c)(6)-1 because you limit your promotion to your members specific businesses. You engage in a regular business of a kind ordinarily carried on for profit in that you provide specific services that would otherwise be necessary for each individual member to conduct on their own or through another entity. You provide the maintenance of common areas, parking lots and similar matters of common concern to the tenants of the shopping center. In addition, you have no common business interest other than a mutual desire to attract customers and to increase their individual sales.

You are similar to the organization described in Rev. Rul. 59-234, which held that the operation of a real estate multiple listing service constitutes a business of a kind ordinarily carried on for profit. Your activities are directed to promoting the general business interests of your members, and therefore, constitute the performance of particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade as a whole.

You are similar to Rev. Rul. 68-264 because you take care of the maintenance needs for the tenants of the shopping center. This activity constitutes the performance of a particular service to your members with the intent of providing efficiency of operations and economies of scale for members.

Like the organization in Rev. Rul. 73-411, you are a membership association comprised of all the tenants of a shopping center. You work collectively within your membership, by using membership fees and assessments collected to maintain and repair common areas, enforce covenants and similar matters of common concern to the tenants. You serve the individual business interests of the tenants of the shopping center.

Like the organizations described in Apartment Operations Ass'n v. Commissioner of Internal Revenue and Indiana Retail Hardware Assn., Inc. v. United States, your activities do not improve the business conditions of one or more lines of business or business conditions of any community as a whole. You perform particular services for members and serve the special interests of your individual members.

Your position

You indicated that your common business interest fit best under encouraging uniformity and cooperation by a retail merchants association.

You referenced your similarities to the organizations in Rev. Rul. 72-102 and Rev. Rul. 74-99. You indicated that these revenue rulings address homeowners' association under IRC Section 501(c)(4) and you are similar to these organizations because you are formed to preserve the appearance of a shopping center and to maintain streets, sidewalks, and common areas for use of the tenants. You also stated the common areas you own and maintain comprise a public road with common utilities (sewer, water, gas and electric) that you are required to maintain along with the public road itself.

Our response to your position

You applied for exemption under IRC Section 501(c)(6). Rev. Rul. 72-102 and Rev. Rul. 74-99 analyzing IRC Section 501(c)(4) do not apply.

You assert that you are similar to Rev. Rul. 74-99; however, Rev. Rul. 73-411 applies. You work collectively within your membership, by using membership fees and assessments collected to maintain and repair common areas, enforce covenants and similar matters of common concern to your tenants. You serve the individual business interests of the tenants of the shopping center. Therefore, you are not described in IRC Section 501(c)(6).

Conclusion

Based on the facts and information submitted, you are not operated exclusively for exempt purposes under IRC Section 501(c)(6). Your activities are not directed to the improvement of business conditions of one or more lines of business. You are providing particular services for your individual members. Accordingly, you do not qualify for exemption under IRC 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 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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements