



Department of the Treasury
Internal Revenue Service
Independent Office of Appeals

Date: **NOV 30 2023**

Person to contact:

Release Number: 202408009

Release Date: 2/23/2024

Employer ID number:

86-0806620

Uniform issue list (UIL):

501.00-00

501.03-00

501.03-30

Certified Mail

Dear :

This is a final adverse determination that you do not 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) .

We made the adverse determination for the following reasons:

You do not meet the organizational test and operational tests under Treasury Regulations 1.501(c)(3)-1(b) & 1.501(c)(3)-1(c)(1), respectively. You are not organized or operated exclusively for charitable, educational, or similar purposes because your primary activity is operating a homeowner's association and maintaining the common areas in the community.

You're required to file federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at [IRS.gov/forms](https://www.irs.gov/forms) or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under IRC Section 6110 after deleting certain identifying information. We provided to you, in a separate mailing, Notice 437, Notice of Intention to Disclose. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you can file an action for declaratory judgment under the provisions of IRC Section 7428 in either:

- The United States Tax Court,
- The United States Court of Federal Claims, or
- The United States District Court for the District of Columbia

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. You can download a fillable petition or complaint form and get information about filing at each respective court's website listed below or by contacting the Office of the Clerk of the Court at one of the addresses below. Be sure to include a copy of this letter and any attachments and the applicable filing fee with the petition or complaint.

You can eFile your completed U.S. Tax Court petition by following the instructions and user guides available on the Tax Court website at ustaxcourt.gov/dawson.html. You will need to register for a DAWSON account to do so. You may also file your petition at the address below:

United States Tax Court
400 Second Street, NW
Washington, DC 20217
ustaxcourt.gov

The websites of the U.S. Court of Federal Claims and the U.S. District Court for the District of Columbia contain instructions about how to file your completed complaint electronically. You may also file your complaint at one of the addresses below:

U.S. Court of Federal Claims
717 Madison Place, NW
Washington, DC 20439
uscfc.uscourts.gov

U.S. District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001
ded.uscourts.gov

Note: We will not delay processing income tax returns and assessing any taxes due even if you file a petition for declaratory judgment under IRC Section 7428.

Taxpayer rights and sources for assistance

The Internal Revenue Code (IRC) gives taxpayers specific rights. The Taxpayer Bill of Rights groups these into 10 fundamental rights. See IRC Section 7803(a)(3). IRS employees are responsible for being familiar with and following these rights. For additional information about your taxpayer rights, please see the enclosed Publication 1, Your Rights as a Taxpayer, or visit IRS.gov/taxpayer-bill-of-rights.

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that helps taxpayers and protects taxpayers' rights. TAS can offer you help if your tax problem is causing a financial difficulty, you've tried but been unable to resolve your issue with the IRS, or you believe an IRS system, process, or procedure isn't working as it should. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. To learn more, visit taxpayeradvocate.irs.gov or call 877-777-4778.

Tax professionals who are independent from the IRS may be able to help you.

Low Income Taxpayer Clinics (LITCs) can represent low-income persons before the IRS or in court. LITCs can also help persons who speak English as a second language. Any services provided by an LITC must be for free or a small fee. To find an LITC near you:

- Go to taxpayeradvocate.irs.gov/litcmap;
- Download IRS Publication 4134, Low Income Taxpayer Clinic List, available at IRS.gov/forms; or
- Call the IRS toll-free at 800-829-3676 and ask for a copy of Publication 4134.

State bar associations, state or local societies of accountants or enrolled agents, or other nonprofit tax professional organizations may also be able to provide referrals.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

If you have questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosures:
Publication 1
IRS Appeals Survey

cc:



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

Date:
 August 29, 2022
 Employer ID number:

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

Legend:

b = number
 c dollars = amount
 W - city/state
 X = date 1
 Y = date 2
 Z = state

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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 IRC Section 501(c)(3). On Form 1023-EZ you attest that you have the necessary organizing document that 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).

As requested, you submitted a copy of your Articles of Incorporation from Y filed in Z. You also submitted amended/restated Articles of Incorporation from X. Article 5 of these restated Articles of Incorporation provides that your purpose is to provide for the management, maintenance and care of the Common Area and to perform such other duties imposed on the Association under your Declaration and Bylaws. You indicated you may be dissolved with consent given in writing by members but did not indicate where assets would be distributed.

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

- 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 Form 1023-EZ that you promote a sense of community, enhance the livability, safety, welfare and interest of your homeowners. You will preserve property values and use your resources to benefit the HOA, as well as maintain your arroyos and common areas to prevent flash floods. When completing Form 1023-EZ you selected an identification code describing organizations that serve the interest of the community as a whole and provide services which meet the needs of people who own or rent apartments, condominiums, townhomes, or other housing complexes who are their members. You later echoed these statements in a mission statement provided with a response to our information request.

Detailed information was subsequently requested. Article 5 of your Articles of Incorporation provides that your purpose is “to promote the health, safety and welfare of your members and to provide for maintenance, preservation and architectural control of certain residence lots and ownership, maintenance, preservation and architectural control of certain common areas located in W”.

Your activities are Homeowners association board meetings and meetings of the architectural committee to enforce covenants and ensure members are properly maintaining their properties. Homeowners association dues/fees of c dollars are assessed annually. You currently have around b houses within the boundaries you serve.

You submitted amended and restated Bylaws and a copy of your Declaration of Covenants. The Declaration of Covenants included, in part, a description of your common areas, association voting rights and purpose, landscaping procedures and restrictions, and property use and restrictions. The Bylaws contained, in part, information on your members; that being an owner of a lot in good standing. You maintain common areas; some of these areas are unrestricted for public use but arroyos are restricted due to flooding concerns increasing potential for property damage.

The majority of your revenues are derived from homeowner’s assessments/dues. You include minimal other income. Your expenses are mainly for the maintenance of common areas, insurance, HOA management and other miscellaneous.

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 test or the 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(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 that 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 or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

In Better Business Bureau of Washington, D.C., Inc v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States interpreted the requirement in IRC Section 501(c)(3) that an organization be “operated exclusively” by indicating that an organization must be devoted to exempt purposes exclusively. The presence of a single non-exempt purpose, if more than insubstantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

Columbia Park and Recreation v Commissioner, 88 TC 1 (1987) held an organization incorporated to develop and operate utilities, systems, services and facilities for the good of the people of Columbia, a private development, was not exempt under IRC Section 501(c)(3). The Tax Court held the organization ‘lacked a sufficient public element’ because it was essentially an aggregation of homeowners and tenants bound together as part of a real estate plan. The organization relied on liens and assessments on property owned by members and people financing the operation had rights based on property ownership to receive benefits offered.

Application of law

IRC Section 501(c)(3) sets forth two main tests for qualification of 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).

Your organizing document states that your purpose is to promote the health, safety and welfare of your members and to provide for maintenance, preservation and architectural control of certain residence lots and ownership, maintenance, preservation and architectural control of certain common areas. Operating a homeowner's association is not an exempt purpose described in IRC Section 501(c)(3). Further, you do not have an adequate dissolution clause indicating the disposition of funds should you terminate. As a result, you have not satisfied the organizational test described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i).

You are not operated in accordance with Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are operated for a substantial nonexempt private purpose. You operate as a homeowner's association to maintain the common areas in your community. Your primary purposes are to assess the dues to owners, hold board meetings and maintain the common areas in your defined community. These activities do not further an exclusively charitable purpose as described in Treas. Reg. Section 1.501(c)(3)-1(d)(2). These facts also illustrate you are operated to serve the private interests of your members in contravention to Treas. Reg. Section 1.501(c)(3)-1(d)(ii).

You are similar to the organization in Columbia Park as you aggregate funds privately from assessed homeowner members to facilitate the payment of maintenance expenses and upkeep within the boundaries of your defined community. While certain areas of what you define as homes within your HOA are public, the majority of your collected funds are used for the private residences of your members.

In Better Business Bureau of Washington D.C., Inc., it was established that a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. As you are operating a homeowner's association for your members you are serving primarily private versus public purposes.

Conclusion

Based on the facts presented, you are not organizing and operating exclusively for exempt purpose within the meaning of IRC Section 501(c)(3). Your primary activity is operating a homeowner's association and maintaining the common areas in the community. 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 897, 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