



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

Date:  
01/08/2024  
Employer ID number:  
  
Person to contact:

Release Number: 202414009  
Release Date: 4/5/2024  
UIL Code: 501.04-00,  
501.04-06, 501.04-07

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:** 11/08/2023

**Employer ID number:**

**Person to contact:**

Name:

ID number:

Telephone:

Fax:

**Legend:**

T = Date

U = State

X = Number

Y = Number

**UIL:**

501.04-00

501.04-06

501.04-07

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.

**Issue**

Do you qualify for exemption under IRC Section 501(c)(4) as an organization operating as a homeowners' association? No, for the reasons stated below.

**Facts**

You were formed on T, by incorporating in the state of U as a mutual benefit corporation with a stated purpose to operate a road association. You own approximately X feet of a roadway that serves Y lots (one is currently vacant) in a residential subdivision. The lot owners are the sole members of your association. The roadway is the sole manner of ingress and egress by members from their residential properties to a public roadway. You have erected signage on a street pole that identifies the name of the roadway and the fact that the roadway is private property. You are responsible for maintenance of the roadway and the plowing of snow. These expenditures approximate % of your total annual planned expenditures. The only common area you maintain for public access and use is a small plot of property where the road splits. You are exclusively funded by dues assessed to the members of the association who are the sole property owners being served by the roadway.

**Law**

IRC Section 501(c)(4) of the Internal Revenue 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

**Letter 4034 (Rev. 01-2021)**

Catalog Number 47628K

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 Treas. Reg. Section 1.501(c)(3)-1.

Revenue Ruling 69-280, 1969-1 CB 152, described an organization formed to provide maintenance of exterior walls and roofs of homes of members who owned houses in a development. It was held that the organization was operated primarily for the private benefit of members and not operated primarily for the common good and general welfare of the people of the community. The services provided to members included maintenance of the exterior walls and roofs of the individual units. If a person purchased a unit in the housing development, he was required to become a member of the organization. The organization was supported entirely by annual dues charged to members. The dues were based on the estimated expenses of the organization plus an amount for reserves to cover large expenditures, such as replacement of roofs.

Rev. Rul. 74-99, 1974-1 C.B. 131, which modified Rev. Rul. 72-102, 1972-1 C.B. 149, 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) 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.

In *Flat Top Lake Ass'n v. United States*, (1989 4th Circuit) 868 F.2d 108, the Court held that a homeowners association did not qualify for exemption under IRC Section 501(c)(4) because it did not benefit a "community" bearing a recognizable relationship to a governmental unit and its common areas or facilities were not for the use and enjoyment of the general public.

#### **Application of law**

You were formed and are operated to maintain a private roadway. You are not operated exclusively for the promotion of social welfare within the meaning of Treas. Reg. Section 1.501(c)(4)-1 because you are operated exclusively for the private benefit of your members rather than for the benefit of the community as a whole. Therefore, you are not organized and operated exclusively for the promotion of social welfare as required by IRC Section 501(c)(4).

You are like the organization described in Rev. Rul. 69-280 because you operate primarily for the private benefit of your members rather than for the community. The only common area you maintain for public access and use is a small plot of property where the road splits. You primarily maintain the private road owned by your members, which does not connect the general public to vital public venues such as parks or recreational facilities.

You are like the organization described in *Flat Top Lake Ass'n* because you do not meet the criteria described in Rev. Rul. 74-99. You do not serve a community which bears a reasonable recognizable relationship to an area ordinarily identified as governmental and you maintain a private road that is for the exclusive use of your member property owners, rather than the general public.

### **Conclusion**

Based on the information submitted, you are not organized and operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(4). You are organized and operated primarily for the private interests of your members by maintaining a private road, and do not promote the social welfare of the community as a whole. Accordingly, you do not qualify for exemption under 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