



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201215014**
Release Date: 4/13/2012
Date: 1/19/2012
UIL Code: 501.06-03
501.04-00

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

Dear

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)(4) or 501(c)(6). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040 (CG) (11-2005)
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933.
The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: November 9, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = state
C = date
D = location
E = homeowners association

UIL:

501.06-00
501.04-00

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(6) or under Code section 501(c)(4). The basis for our conclusion is set forth below.

Issues

1. Do you qualify for exemption under section 501(c)(6) of the Code? No, for the reasons stated below.
2. Do you qualify for exemption under section 501(c)(4) of the Code? No, for the reasons stated below.

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

Facts

You were formed as an unincorporated association in the state of B on C. According to your Bylaws, your organizing document, you were formed for the following purposes:

- a. To represent the best interests of all property owners within the community of D, a planned unit development located in B, and especially as it relates to the proper and reasonable governance of the business and financial affairs of D
- b. Inform, advise and positively influence E's board of directors about relevant D community and business issues and their conduct of the business affairs and governance of E
- c. Inform and educate D property owners about relevant D community and business issues of importance and especially those which impact the fair and reasonable governance of business affairs with D
- d. Assist in the election of D owners to the E board of directors who generally agree with the positions advocated by you

D is a private gated community consisting of 510 homeowners which exists to ensure the safety and enjoyment of residents and their guests, the preservation of the aesthetic values of the community and the protection of D property owners. Included in D is a private country club with a golf course. Homeowners of D are assessed a mandatory fee providing access to this country club among other amenities. Residents of D are covered under the provisions of E, D's homeowner association.

Your activities consist of attending the monthly board meetings as well as researching and evaluating the business and financial practices of E. You then send letters to residents of the D subdivision to communicate your views and positions regarding the actions of E to which you are opposed. The letters include endorsements of candidates for E's board of directors, one of which is your president.

You meet with members and paid staff of E to advocate your principles. Your membership is confined to property owners in your subdivision. You currently have 51 homeowners contributing to you out of 510 homeowners in the subdivision.

You will receive funding through voluntary contributions from homeowners within D. Your expenses will include supplies, legal fees, and meeting and mail expenses.

Issue One: 501(c)(6)

Law

Section 501(c)(6) of the Internal Revenue Code exempts Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations 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. 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.

Revenue Ruling 59-391, 1959-2 C.B. 151, stated that an organization is composed of individuals, firms, associations, and corporations, each representing a different trade, business, occupation, or profession. It was created for the purpose of exchanging information on business prospects and has no common business interest other than a desire to increase sales of members. *Held*, such an organization is not entitled to exemption from federal income tax as a business league under section 501(c)(6) of the Internal Revenue Code of 1954.

Revenue Ruling 70-244, 1970-1 C.B. 132, stated that an organization of business and professional persons of a community, providing luncheon and bar facilities for its members but having no specific program directed to the improvement of business conditions, does not qualify for exemption under section 501(c)(6) of the Code.

In American Automobile Association v. Commissioner, 19 T.C. 1146 (1953) the court denied exemption as a business league. The organization was open to individual motorists without regard to business interests. Since there was no common business interest among its members, the organization could not have as its purpose the furtherance of the common business interest of all its members. Therefore the organization does not meet the membership and purpose requirements for section 501(c)(6). Although the petitioner engaged in some activities of a civic nature, notably, in the field of traffic and highway safety, its main activities were not directed toward the improvement of business conditions. The court found the petitioner's main purpose and activities cannot be characterized as fostering the improvement of business conditions and practices generally in an industry. Therefore the organization is not an exempt business league.

Application of Law

You are not an organization described in Section 501(c)(6) because your activities are not those of a business league, chamber of commerce or real-estate board. Representing the interests of select property owners as it relates to the governance of your community subdivision and attempting to influence your owner's association are not the activities of a business league, chamber of commerce or real-estate board.

You do not meet the requirements of section 1.501(c)(6)-1 of the Regulations because your members do not share and promote a common business interest. Your activities consist of providing services to members as opposed to improving the business conditions of one or more lines of business. This is evidenced by the fact that your activities are directed exclusively at the D community and not to a line of business. Owning a home is not a line of business. Finally, you state that these concerns are most applicable to the 35 percent of homeowners in D that are not members of the country club.

You are similar to the organization described in Revenue Ruling 59-391 since your members do not share a common business interest. Membership consists of homeowners who have common residences not common business interests. Here, you were formed to exchange information on the conduct of E which furthers no line of business. For these reasons you do not qualify for exemption under 501(c)(6).

You are similar to the organization in Revenue Ruling 70-244 because you do not have a program designed to improve the business conditions of one or more lines of business. Your activities, meeting with members of E and attending their meetings for the purpose of achieving a safer, more secure and well managed community, furthers no line of business. You were formed to represent and advocate the interests of your members as well as to serve as a system of checks and balances on E. E is a homeowners association, not an industry or line of business. For these reasons you do not qualify for exemption under 501(c)(6).

You are also similar to the organization in *American Automobile Association v. Commissioner, supra*, because your membership is open to any property owner in D without regard to their business interests. Therefore, you cannot be characterized as fostering the improvement of business conditions and practices generally in an industry.

Applicant's Position

You stated that you monitor, advise and advocate the governance, maintenance and operations of E thereby improving the general economic welfare and business conditions of all real estate owners within your subdivision. Furthermore, you meet the

basic requirements of a business league under the provisions of IRC 501(c)(6). It is your position that you are an advisory and advocacy organization which does not own property in D. Finally, you point out that the term “line of business” refers to an industry or all components of an industry within a geographic area such as D.

Service Response to Applicant’s Position

After considering your position, we have concluded that the basis previously cited for proposing to deny your application for exemption under section 501(c)(6) remain valid.

Due to the fact that your membership is composed of individuals confined to a specific community subdivision without a common business interest as described in the preceding facts and analysis, you do not meet the requirements to be considered a business league.

You cited that a line of business can promote all components of an industry within a certain geographic area. A gated community of homeowners does not constitute an industry. Therefore there is no industry in relation to your geographic area. You are promoting the interests of certain homeowners in D relative to the policies and practices of E, the homeowner’s association in D.

Issue Two: 501(c)(4)

Law

Section 501(c)(4) of the 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 exempt from federal income tax.

Treasury Regulation 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 paragraph (c)(3) of Regulation 1.501(c)(3)-1.

Rev. Rul. 80-206; 1980-2 C.B. 185; A nonprofit organization that promotes the legal rights of tenants in a particular community and occasionally initiates litigation to contest the validity of legislation adversely affecting tenants may qualify for exemption under section 501 (c) (4) of the Code as a social welfare organization.

Rev. Rul. 73-306; 1973-2 C.B. 179; A nonprofit organization formed to represent member-tenants of an apartment complex in negotiations with landlords, in litigation, and before local and federal regulatory agencies with respect to matters of mutual concern to the tenants does not qualify for exemption under section 501 (c) (4) of the Code.

Rev. Rul. 74-17; 1974-1 C.B. 130 An organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code. Condominium ownership involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners. Since the organization's activities are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare.

Application of Law

Section 501(c)(4) of the Code provides that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare may be exempt from federal income tax. Treasury Regulation 1.501(c)(4)-1 defines social welfare as being primarily engaged in promoting in some way the common good and general welfare of the people of the community. Based upon the facts you presented, you do not promote the common good and general welfare of the people in the community, rather, you promote only the individual interests of some property owners in D as it relates to their obligations to E. You are advocating for aspects within the covenants of E. Thus, you are operating for the private interests of your members and not for the welfare of the people of the community and do not qualify for exemption under 501(c)(4).

You are distinguishable from the organization in Revenue Ruling 80-206 in that the organization in this ruling educates tenants in an entire county about their legal rights and obligations. You advocate changing certain agreements within your covenants with which you disagree. The organization in Revenue Ruling 80-206 educated and informed their residents. You advocate for a particular outcome and lobby to elect individuals to your homeowners association. You are also distinguishable in that you

are primarily concerned with your private, gated subdivision and not the larger community in general. In this characteristic you are similar to the organization in Revenue Ruling 73-306. In this Revenue Ruling the organization was formed only to promote the interests of residents within a particular apartment complex. You are similar in that you promote only the interests of residents within a private gated subdivision.

The organization described in Rev. Rul. 74-17 failed to qualify for exemption from federal income tax because it was formed solely to provide for the management and maintenance of a condominium housing project. Similarly, you are formed to advocate for a change in the management of E. This is evidenced by your promotion and sponsoring of candidates for election to E's governing body. In addition, according to your letter to property homeowners, you work to improve your community especially as it relates to protecting and enhancing your property values. The letter also describes your opposition to the transfer of the responsibility of exterior residential maintenance to individual homeowners. Therefore, you are operating for the private interests of your members and do not qualify for exemption from federal income tax under section 501(c)(4) of the Code.

Applicant's Position

You state that you benefit the community by being open to all homeowners in D, providing the owners with information and perspective regarding community issues. You also state that you serve as an advocate of your members to bring issues to the attention of E, thereby serving as a system of checks and balances. You believe that E has made decisions detrimental to your "community". You state that your success or failure may impact the broader community of D.

You go on to say that you do not carry on any kind of "business" normally operated for profit and no part of your earnings will inure to the benefit of private individuals. Furthermore, you state that your efforts have not been directed at benefitting any single owner or group of owners with your community.

Service Response to Applicant's Position

After considering your position, we have concluded that all bases previously cited for proposing to deny your application for exemption under section 501(c)(4) remain valid.

The information provided to your community is based upon disagreements between you and E. Literature also includes promoting certain individuals to be elected to E's governing body. These items along other materials advocate to your members how disagreements with E will exclusively impact their individual property values.

You state that your success or failure will benefit the broader community outside D, a gated subdivision. However, you acknowledge that your “efforts are directed principally at improving the governance and social welfare of the D community.” Therefore, any benefit to the broader community outside of your gates is merely incidental to benefitting the private interest of your homeowners.

According to the information you submitted, you were started in 2009 by a group of homeowners within D in response to your growing concerns about the governance of your “community”. You go on to say, “these concerns apply most especially as it relates to the interests of the approximately 35 percent of all D owners who are not members of the D country club.” Since you were formed for the purpose of responding to concerns of a minority of homeowners in D, your efforts have been directed to a small group of owners within your community.

Conclusion

Based on the facts and information provided, the Service concludes that you do not meet the standards of exemption under section 501(c)(6), because your purpose and activities are not in furtherance of a common business interest. Instead you advocate for the interests of a group of homeowners which is not a line of business or industry. 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 section 501(c)(4) of the Code. Your efforts are to advocate and promote your interests within a gated subdivision as opposed to informing and educating the community in general. Therefore you are not described in Section 501(c)(4). It is the burden of the applicant organization to provide evidence that they meet the standards of exemption. We find that you have not met this burden.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892