



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201623013**
Release Date: 6/3/2016
UIL Code: 501.04-07

Date: March 11, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(4) of the Internal Revenue Code (the Code). 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 federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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, follow the instructions in the Notice 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 contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: January 21, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

X = Street

UIL:

501.04-07

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(4) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

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

Facts

You are an unincorporated association that was formed to maintain a private road that is the common driveway to four homes. X is a private road that the homeowners are obligated to maintain because the town will not. X requires plowing and sanding every winter. You had previously found vendors willing to invoice the individual homeowners one-fourth of the cost of maintenance each season. This is no longer an option so you set up an account that could be a single payer to a service provider who could maintain the road. In addition to snow plowing, this account may be used for other maintenance work in the future if a future vendor requires a single payer.

Your organizing document titled "X Association Account for Paying Plowing Costs for the Common Drive" states that in order to retain your current snow plowing vendor, you needed to move to a single-bill, single-payer system for the common drive. Your organizing document also states that if any household sells its property on X, it will receive a return of its capital (unused plowing funds, unused reserve, and contribution toward the minimum account balance).

The four homeowners along X make up your governing body. To be a member of your association, one must own a home accessed by the common drive. Each of the four homes on the common drive has one vote in the association.

Your revenue is from fee assessments from members. Each member has contributed an equal share to cover the maintenance costs for the common driveway and administrative costs of your organization.

Law

Section 501(c)(4) of the Internal Revenue Code (the Code) provides for the exemption 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.

Treasury Regulation Section 1.501(c)(4)-1(a)(2)(i) 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 that is operated primarily for the purpose of bringing about civic betterments and social improvements.

In Revenue Ruling 72-102, 1972-1 C.B. 149, an organization that was formed to preserve the appearance of a housing development and to maintain streets, sidewalks and common areas for use of the residents in the development was determined to qualify for exemption under section 501(c)(4) of the Internal Revenue Code.

Revenue Ruling 74-99, 1974-1 C.B. 131, describes the circumstances in which a homeowners' association may qualify for exemption under section 501(c)(4) of the Internal Revenue Code. The ruling states that three elements must be satisfied:

- 1) it 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.

Revenue Ruling 75-199, 1975-1 C.B. 160, describes a nonprofit organization that restricts its membership to individuals of good moral character and health belonging to a particular ethnic group residing in a stated geographical area and provides sick benefits to members and death benefits to their beneficiaries. The organization's income is derived principally from membership dues. Since the benefit from the organization was for its members and there was only minor and incidental benefit to the community as a whole, the organization did not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.

Revenue Ruling 80-63, 1980-1 C.B. 116, clarifies Revenue Ruling 74-99, 1974-1 C.B. 131. It provides answers to specific questions as to whether the conduct of certain activities will affect the exempt status under section 501(c)(4) of the Internal Revenue Code of otherwise qualifying homeowners' associations. The ruling states that:

- 1) the term 'community' does not embrace a minimum area or a certain number of homeowners,

- 2) a homeowners' association may not receive an exemption if it represents an area that is not a community and it restricts the use of its recreational facilities to only members of the association,
- 3) an affiliated recreational organization operated totally separate from the homeowners' association may be exempt so long as there is no benefit flowing back to any member, and
- 4) a homeowners' association cannot own and maintain parking for the sole use of its members if it is not a community.

Application of law

You are not described under section 501(c)(4) of the Code because you are not operated exclusively for the promotion of social welfare. You were formed to provide maintenance of a common driveway for the benefit of your members.

Per Treasury Regulation Section 1.501(c)(4)-1(a)(2)(i), you are not operated exclusively for the promotion of social welfare since you provide maintenance of a common driveway for the benefit of your members. Therefore, you do not promote the common good and general welfare of the people of the community.

You are not like the organization in Rev. Rul. 72-102. You were formed to collect fee assessments from members and maintain a road that the members of your organization are responsible for maintaining. The road you maintain is accessed by the public only to reach the four members who own homes along the road. Your activities are therefore for the benefit of the members and not for the community as a whole.

Furthermore, you are not like the organization in Rev. Rul. 74-99. You were formed to maintain a road for the benefit of your members who each pay fees to cover the cost of maintenance of the road and administrative fees for your organization. Your organization was therefore formed to benefit the members and any benefit to the community as a whole is incidental. Also, as defined in Rev. Rul. 80-63, your organization is made up of four members and does not meet the requirements for a community as stated in Rev. Rul. 74-99.

Based on the information provided, you are like the organization in Rev. Rul. 75-199. Your membership is limited to the property owners along X and your only income is from fee assessments from members. Your income is used to provide direct benefits to members and your earnings inure to the benefit of the members. The benefit to the larger community is minor and incidental.

Conclusion

Based on the facts presented above, we hold that you do not meet the requirements for tax exemption under section 501(c)(4) of the Internal Revenue Code because you are not organized and operated exclusively for the promotion of social welfare.

Accordingly, you do not qualify for exemption under section 501(c)(4) of the Internal Revenue Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number

- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts 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 he or she hasn'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 provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

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

U.S. mail:

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

Street address for delivery service:

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

You can also fax your statement 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 he or she received it.

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.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892