



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201810010**
Release Date: 3/9/2018
UIL Code: 501.04-00
501.04-01

Date:
December 14, 2017
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,

Stephen A. Martin
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:
September 6, 2017
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

U = State
V = Date of formation
x dollars = Amount

UIL:

501.04-00
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 incorporated in the State of U on V. Your Articles of Incorporation state that your purpose is to operate on behalf of the individual owners a condominium association pursuant to the Master Deed and Bylaws governing such operations and applicable state laws, including the right to: a) manage and administer affairs, b) rebuild, c) levy and collect assessments and insurance, d) employ and contract for management, maintenance, etc., e) adopt regulations, f) own, maintain, improve, buy, sell, mortgage, etc., real or personal property to provide benefits to members of the corporation, and g) to borrow or incur indebtedness, and h) enforce condominium documents.

There are less than 20 condominium units in your development. Ownership of one of the units in the development is the only qualification for membership. There is one membership per unit. The membership automatically terminates upon the sale, transfer, or other disposition of the title interest of the unit.

You submitted Bylaws which state, in part, that you are to be administered by an association of owners which shall be a non-profit corporation, organized under the applicable laws of the State of U, and responsible for the management, maintenance, operation and administration of the Common Elements, easements and affairs of the Condominium Project.

Your Bylaws also state that you are responsible for any incidental damage to any residential dwelling located within the perimeter of a Unit and appurtenant structural Limited Common Elements cause by reconstruction of the General Common Elements. If there is a casualty causing damage to property for which you have the responsibility of maintenance, repair and reconstruction, then you will take steps to have the property repaired.

The Mater Deed you provided states the General Common Elements for which you are responsible include:

- a. The electrical wiring network throughout the project up to, but not including the Unit
- b. The telephone wiring network throughout the Project up to, but not including, the Unit
- c. The gas line network throughout the Project up to, but not including, the Unit
- d. The water distribution system throughout the Project, but not including, the Unit
- e. The storm drainage system including the swale areas which the unit owner must maintain, and
- f. Other elements of the Project not designated as General or Limited Common Elements which are not enclosed within the boundaries of a Unit, and which are intended for common use or necessary to the existence, upkeep and safety of the Project.

Your application states that your only source of financial support is your members' annual dues in the amount of x dollars per member. You said the dues you collect are used to pay for the maintenance of one small common area and the liability insurance for the common area.

Law

Section 501(c)(4) of the Code provides for the exemption from federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare or legal associations of employees, the membership of which is limited to the employees of the 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.

Rev. Rul. 74-17, 1974-1 C.B. 130, describes 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 that did not qualify for exemption under Section 501(c)(4) of the Code. Condominium ownership involved ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constituted the provision of private benefits for the unit owners. Since the organization's activities were for the private benefit of its members, it could not be said to be operated exclusively for the promotion of social welfare.

In Rev. Rul. 74-99, 1974-1 C.B. 131, it is explained that a homeowners association, to qualify for exemption under Section 501(c)(4) of the Code, (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 Section 501(c)(4) of the Code when it did not benefit a "community" bearing a recognizable relationship to a governmental unit and when its common areas or facilities were not for the use and enjoyment of the general public.

Application of law

You are not as described in Section 501(c)(4) of the Code and Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i) because your activities do not primarily promote civic betterment or social welfare; rather, you are primarily operating for the benefit of your members.

You are very similar to the organization that was denied exemption in Rev. Rul. 74-17. Like that organization, you do not to promote the interests of a community. Instead, you maintain a small common area and the Common Elements of a privately-owned condominium development with less than 20 owners. You do not qualify for exemption because you operate for the private benefit of your members.

You are distinguished from Rev. Rul. 74-99 because you do not serve a community that resembles an area that could reasonably be identified as governmental; rather you are similar to the organization in Flat Top Lake Ass'n. Furthermore, the maintenance of the Common Elements, such as wiring and utility lines, are for the benefit of your members, and not for the general public. Therefore, you are not primarily operating for the promotion of social welfare and fail to qualify for exemption under Section 501(c)(4) of the Code.

Conclusion

Because you operate primarily for the benefit of your members and not for the social welfare or the common good of the community in general, you do not qualify for exemption under Section 501(c)(4) of the 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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892