

Internal Revenue Service
Appeals Office

Department of the Treasury

Employer Identification Number:

Date: SEP 26 2019

Person to Contact:

Number: 201951014
Release Date: 12/20/2019

Employee ID Number:
Tel:
Fax:

UIL Codes: 501.04-00
501.04-07

Certified Mail

Dear :

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Section 501(c)(4) of the Code.

We made the adverse determination for the following reason(s):

Your organization is not organized and operated exclusively for the promotion of social welfare. Your activities privately benefit your members.

You're required to file Federal income tax returns on Form 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 www.irs.gov/forms-pubs 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 Code section 6110 after deleting certain identifying information. We have 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 may file an action for declaratory judgment under the provisions of section 7428 of the Code in either:

- United States Tax Court,
- The United States Court of Federal Claims,
- 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. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

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

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file petition for declaratory judgment under section 7428 of the Code.

Please refer to the enclosed Publication 892, How to Appeals an IRS Determination on Tax -Exempt Status, for more information about the Appeals process.

You also have the right to contact the Taxpayer Advocate Service (TAS). 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 you've tried but haven't been able to resolve your problem with the IRS. Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You If you qualify for TAS assistance, which is always free. TAX will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

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 any questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosure: Publication 892



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

SEP 26 2019

Date:

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = state
C = date
d= number

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 were formed in the state of B on C. According to your bylaws, you are authorized to do any and all lawful things in operating for the best interest of your members. You will create and carry out a plan to improve, develop, maintain, use and continuation of a commercial park for the mutual benefit of the owners thereof.

You maintain the common areas for an industrial park for the owners. Each of your members are required to be a lot owner in the industrial park and not delinquent in any of their assessments. Each lot owner shall receive one vote per d square feet contained in their lot. If a member transfers ownership in their property the new owner automatically becomes a member and the old membership terminates. Ownership of property is the only qualification for membership. You are funded solely by member assessments.

You will own and improve, manage, maintain, repair, replace, insure, and operate the common areas and shared use facilities in the commerce park. These areas include common driveways, common lighting and utility facilities. You will also provide approval of new construction designs and improvements on existing structures in accordance with your architectural standards. You will be responsible for landscaping of common areas, water drainage maintenance and operation of an electric sign.

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.

Treasury Regulation Section 1.501(c)(4)-1(a)(2)(i) provides, in part, 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.

Rev. Rul. 73-306, 1973-2 C.B. 179, provides that an organization formed for the purpose of promoting the common interest of tenants who reside in a particular apartment complex does not qualify for exemption under Section 501(c)(4) of the Code. Any person regularly living in the complex was eligible for membership. The organization represented its member-tenants in negotiations with the management of the complex in order to secure better maintenance and services, as well as reasonable rents. The ruling holds that the organization was not described in Section 501(c)(4) because it operated essentially to benefit its members and, thus, was not primarily engaged in activities that promote the common good and general welfare of the community.

Rev. Rul. 74-99, 1974-1 C.B. 131, provides that in order to qualify for exemption under Section 501(c)(4) of the Code, a homeowners association (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.

Rev. Rul. 80-63, 1980-1 C.B. 116, clarified Rev. Rul. 74-99 and states that by providing facilities only for the use of its members, the association was operating for the private benefit of its members, and not for the promotion of social welfare within the meaning of Section 501(c)(4) of the Code.

In *Contracting Plumbers Cooperative Restoration Corp. v. United States*, 488 F.2d 684 (2d Cir. 1973), cert. denied, 419 U.S. 827 (1974), plumbers working in New York City were responsible for the cuts they made in the city streets. Prior to the organization's existence, the city had repaired the cuts and billed the plumbers individually in what proved to be a highly inefficient system. The organization was formed to restore the city streets. It only repaired cuts made by its members. The joint effort of the plumbers reduced their liability and their expenses, and more efficiently repaired the city streets. While the court found that the program provided substantial benefits to the public, it concluded that the organization primarily served the private economic interests of its members and, thus, could not be considered exempt under Section 501(c)(4) of the Code.

Application of law

You are not described in Section 501(c)(4) of the Code nor do you meet the requirements of Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i) because you are not primarily engaged in promoting, in some way, the common good and general welfare of the people of the community. You do not bring about civic betterment and social improvements to the community as a whole, and for these two reasons, you are not operated primarily for the promotion of social welfare. Rather, you are operated for the benefit of your members.

Your members are the primary beneficiary of your activities. Similar to the organization described in Rev. Rul. 73-306, you are operating to benefit your members and are not primarily engaged in activities that promote the common good and general welfare of the community and, thus, are not exempt under Section 501(c)(4) of the Code.

You are not serving the community as a whole and your facilities are not for the use and enjoyment of the general public. Therefore, you fail to qualify for exemption under Section 501(c)(4) of the Code, as described

in Rev. Rul. 74-99 and Rev. Rul. 80-63.

Providing services for your members, who are owners of lots in the industrial park, is not a Section 501(c)(4) activity. The services you provide confer a sufficient amount of private benefit on your members, who are the owners of the lots in the industrial park. Even if you were to substantially benefit the community, you would fail to qualify for exemption because you primarily benefit private interests. See *Contracting Plumbers*.

Conclusion

Based on the information submitted, we conclude that you are not an organization described in Section 501(c)(4) of the Code because you are not operated exclusively for the promotion of social welfare and your activities privately benefit your members.

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