



Department of the Treasury
Internal Revenue Service

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **202014018**
Release Date: 4/3/2020
UIL Number: 501.04-00, 501.04-07

Date: January 9, 2020
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 Internal Revenue Code (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 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 IRC 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, 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: October 31, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date
C = State
D = Date
E = Name

UIL:

501.04-00
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)? No, for the reasons stated below.

Facts

You were incorporated on B in the state of C as a non-profit corporation. You have filed Form 1120 tax returns since formation and submitted Form 1024-A, *Application for Recognition of Exemption under Section 501(c)(4) of the Internal Revenue Code*, on D.

Your Form 1024-A provides that you enhance and continue to develop the property known as E by enforcing deed restrictions and covenants home owners are subject to regarding the care, maintenance, and outward appearance of their homes. Your Articles of Incorporation indicate that you were formed for the purpose of providing and maintaining the common areas, facilities, and a sense of overall benefit to the owners, residents, and occupants of the land subject to your jurisdiction.

You stated that, while the perimeter of the area you maintain is fenced, you do not maintain a gated community; the roadways, exits, and entrances are open to the general public. While certain common green spaces are similarly open, the swimming pool and clubhouse are restricted to members only. In addition, only members have access to the lake for recreational purposes.

Membership is compulsory for homeowners residing within the fenced area. Members pay dues and all funds are spent on the upkeep of common areas, which include streets, outdoor lighting, clubhouse, pool, lake, and

other green space. You specified you do not conduct activities directed to the exterior maintenance of private residences.

Law

IRC Section 501(c)(4) provides for 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 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 for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 74-99, 1974-1 C.B. 131, provides that a homeowners' association must, in addition to otherwise qualifying for exemption under IRC Section 501(c)(4), satisfy the following requirements: (1) It must engage in activities that confer benefit on a community comprising a geographical unit which bears a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof; (2) It must not conduct activities directed to the exterior maintenance of private residences; and (3) It owns and maintains only common areas or facilities such as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public and is not restricted to members of the homeowners' association.

Revenue Ruling 80-63, 1980-1 C.B. 116, clarified Revenue Ruling 74-99 by providing answers to specific questions as to whether the conduct of certain activities will affect the exempt status under IRC Section 501(c)(4) of otherwise qualifying homeowners' associations. The ruling stated 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.

In Flat Top Lake Association v. United States, 868 F.2d 108 (1989), the Court held that a homeowners' association did not qualify for exemption under IRC Section 501(c)(4) where 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 described in IRC Section 501(c)(4) and Treas. Reg. Section 1.501(c)(4)-1 because you are not operated exclusively for the promotion of social welfare. You restrict access to your clubhouse, lake, and swimming pool to members of the homeowners' association.

You do not meet the requirements of Revenue Rulings 74-99 and 80-63 because access to your clubhouse, lake, and swimming pool is not extended to members of the general public. Because critical common areas in your development are not accessible by the general public, you do not bestow a community benefit.

You are similar to the organization described in Flat Top Lake Association because your common areas and facilities are not for the use and enjoyment of the general public.

Conclusion

You do not qualify under IRC Section 501(c)(4) because you are not operated exclusively for the promotion of social welfare and your activities primarily benefit your members.

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 Decision 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
P.O. 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 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 or call 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements