



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities  
PO Box 2508  
Cincinnati, OH 45201

Number: **202124010**  
Release Date: 6/18/2021

UIL Number: 501.00-00, 501.04-00, 501.04-07

Date:  
03/23/2021  
Employer ID number:

Form you must file:

Tax years:

Person to contact:  
Name:  
ID number:  
Telephone:

Dear \_\_\_\_\_ :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in 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 the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit [www.irs.gov](http://www.irs.gov).

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. 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 call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:  
Notice 437  
Redacted Letter 4034  
Redacted Letter 4038



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

Date:  
02/02/2021  
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

Q = State  
R = Date  
S = Community  
T = Association  
U = Number

**UIL:**

501.00-00  
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.

**Issues**

Do you qualify for exemption under IRC Section 501(c)(4)? No, for the reasons stated below.

**Facts**

You were incorporated in the state of Q on R to function as a homeowners' association (hereafter "HOA"). Your Bylaws indicate you were formed to govern the property which is subject to the provisions of the Declaration of Covenants, Conditions, Restrictions and Easements of the S subdivision, which is recorded in the county records.

As a HOA, you maintain a small subdivision that is comprised of U lots. You have entered into a Joint Maintenance and Easement Agreement with an adjacent HOA known as T. You share certain improvements and facility needs with T. You share responsibility with T to maintain or improve the rights of way in which the streets have been constructed, the dry hydrant located in an easement in the subdivision, entry features, signage and landscaping at the boundary of the private roads, all community mailbox improvements, perimeter fencing installed along the portion of the exterior of the subdivision, and the open space between your subdivision and T.

The geographic area you serve is a small subdivision. You own no facilities or common areas. You administer and enforce covenants for preserving the properties located in S. The community is not gated. The roads you

maintain are \_\_\_\_\_ which are open to the general public. You also maintain a \_\_\_\_\_ and other areas in conjunction with T, which are not open to the general public. The \_\_\_\_\_ and other areas are only open to members of the \_\_\_\_\_ HOAs.

Your only sources of financial support are your HOA fees. You indicated your expenses consist of road maintenance, insurance, and legal and accounting service fees.

### **Law**

IRC Section 501(c)(4) 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 Section 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.

Revenue Ruling 74-99, 1974-1 C.B. 131, indicates that a homeowners association, to qualify for exemption under IRC Section 501(c)(4), (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) 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.

Rev. Rul. 80-63, 1980-1 C.B. 116, clarified Rev. Rul. 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) 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 described in IRC Section 501(c)(4) and Treas. Reg. Section 1.501(c)(4)-1 because you are not operated primarily for the promotion of social welfare. You maintain private property, including a \_\_\_\_\_, for the benefit of the members of the HOA and not the general public.

You do not bestow a community benefit as described in Rev. Rul. 74-99 and 80-63. You do not promote the common good and general welfare of the people in the community, but rather promote the interests of the homeowners of U lots occupying a single, small subdivision known as S. Your activities are aimed at the maintenance of areas that serve an exclusive, rather than broad, class of people. You do not qualify for exemption under IRC Section 501(c)(4) because you are operated for the private benefit of your members and not for the common good and general welfare of the people of the community.

The Court in Flat Top Lake Association held that you must serve a “community” which bears a reasonable recognizable relationship to an area ordinarily identified as governmental in order to qualify for exemption as a homeowners’ association under IRC Section 501(c)(4). The persons you serve are residents of S, located within one small, defined area. You are serving the interests of the homeowners of S, rather than the community at large. Accordingly, you do not qualify for exemption as a homeowners’ association under Section 501(c)(4).

### **Conclusion**

Because you operate primarily 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 IRC Section 501(c)(4).

### **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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements