



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

Date:
01/30/2023
Employer ID number:

Form you must file:
1120

Tax years:
All

Person to contact:

Release Number: 202317021
Release Date: 4/28/2023
UIL Code: 501.04-00

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.

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 Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 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:
Letter 437
Redacted Letter 4034
Redacted Letter 4038



Department of the Treasury
Internal Revenue Service
PO Box 2508
Cincinnati, OH 45201

Date:
November 2, 2022
Employer ID number:

Person to contact:
Name:
ID number:
Telephone:
Fax:

Legend:

B = Date
C = State
D = City, State

UIL:
501.04-00

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 formed as a corporation on B in C. Your Articles of Incorporation state that your general objects and purposes are to promote economic development and the general welfare to the business, professional, and community interests of the inhabitants of D, and the territory surrounding D. The primary purpose is conserving, improving, developing, promoting, advancing, and expanding existing industrial, commercial and professional enterprises in D; to attract and aid in securing the location of new industries and business to D; to promote economic development in D by advertising and publicizing the industrial, cultural, labor, social and educational and physical advantages of D, and to assist and acquire the establishment thereof by locating, developing and making available suitable industrial sites and business locations.

According to your application, you provide economic development possibilities to D ranging from residential, commercial, and industrial. You promote the common good and general welfare of D by the development of residential and commercial lots to further community development in a rural area. You believe that you meet the community benefit standard because your efforts and activities are not controlled to any significant degree by those benefitted. You feel that by bringing opportunities to D, you will allow for residential, industrial, and commercial land usage to allow employees and employers to grow within the community. You state that funding will be provided in the form of grants from D, with the remainder provided in the form of loans from a local community bank. Lots will be sold at or below cost to attract businesses and residents to the community.

We asked for more detail about your economic development activities, and you replied that your role is to purchase land for development, derelict properties for razing and re-development, and support of community service providers in fire and rescue as well as fund raising efforts for park and recreation projects. There are no government designations of the D area such as a deteriorated or blighted and you did not establish that the median income is less than state or national averages.

You typically provide developed lots with infrastructure (roads and utilities) to commercial, industrial and/or residential developments that are owned by you until sale occurs. You are exploring options in a new residential area (single and multi-family units) that would include developed lots with infrastructure directed mostly toward moderate to lower income families and a new section for industrial park development, presumably adjacent to a current industrial park. Most of the property you deal with is new, but you have acquired existing as well. Typical sales have been to individuals for family home building and/or commercial business owners that are looking to expand their businesses in the area. Pricing is typically focused on cost recovery. You will take into account land acquisition costs, infrastructure costs and incorporate TIF programs to allow for lot pricing that will hopefully encourage lot sales and development of lots. You stated that you are different than for-profit entities that engage in lot sales because you have a completely volunteer board that receives no compensation for any activities that occur. Because D is a small rural town that is in constant competition with neighboring communities, your goal is not to maximize return, but to encourage community development with the hope that you will recover the costs of these developments.

You were not created by a governmental unit, and you have not actively solicited public donations. There is no control or oversight of your activities by a governmental unit and, other than filing Form 990 annually, you aren't subject to financial audits by governmental units.

Advertising material indicates that you have residential lots for sale that go up to an acre in size and are available to any interested buyer.

Your primary revenue is derived from the sale of lots and the majority of your expenses are for cost of lots sold, interest expense, advertising, utilities, property taxes, and insurance.

Law

IRC Section 501(c)(4) provides for the exemption of civic leagues or other organizations not formed or operated for profit and 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 by working to bring about civic betterments and social improvements.

Treas. Reg. Section 1.501(c)(4)-1(a)(2)(ii) provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

In Revenue Ruling 64-187, 1964-1 C.B. 187, a nonprofit corporation organized to aid and promote the purposes of the Area Redevelopment Act, Public Law 87-27, by providing funds through loans to purchase or develop land and facilities to alleviate unemployment in areas classified as "redevelopment areas" under the Act, is held exempt from Federal income tax under IRC Section 501(c)(4) as a civic league. The primary purpose of the

Area Redevelopment Act is to overcome unemployment and the accompanying hardship and wasting of vital human resources. Its method of accomplishing this, in part, is to facilitate the financing of projects for the purchase or development of land, or facilities for industrial and commercial usage, in areas that have substantial and persistent unemployment or underemployment and which have been designated as 'redevelopment areas' by the Secretary of Commerce.

Revenue Ruling 67-294, 1967-2 C.B. 193, describes a nonprofit organization created to make loans to business entities as an inducement to locate in an economically depressed area in order to alleviate unemployment. Financial assistance is offered only if it will provide more than temporary alleviation of unemployment. Such loans are not available on the same terms from commercial sources. By encouraging industry to settle in an economically depressed area, the organization is helping alleviate unemployment and is being operated to bring about civic betterment and social improvement. Accordingly, it qualifies for exemption from Federal income tax under IRC Section 501(c)(4).

Rev. Rul. 70-535, 1970-2 C.B. 117, provides that a nonprofit organization formed to manage low and moderate income housing projects for a fee does not qualify for exemption under IRC Section 501(c)(4). The organization entered into agreements with a number of nonprofit corporations to manage low and moderate income housing projects for a fee. The organization operates in a manner similar to those providing such management services for profit. Managing these housing projects is the organization's primary activity.

In People's Educational Camp Society, Inc. v. Commissioner, 331 F.2d 923 (2d Cir. 1964), a nonprofit corporation's social welfare activities were supported by its operation of a commercial resort. The court rejected the argument that the resort activities were social welfare and characterized them as business activities. It noted that a large portion of the revenue was being reinvested in the commercial operation. As the business activities were of such magnitude in comparison with the social welfare activities that the organization could not be said to be exclusively (that is, "primarily") engaged in the promotion of social welfare, the court held the organization nonexempt.

Application of law

IRC Section 501(c)(4) and the related regulations define social welfare activities as those which 1) promote the common good and general welfare of the people in the community and 2) do not include carrying on a business with the general public in a manner similar to organizations which are operated for profit. Treas. Reg. Sections 1.501(c)(4)-1(a)(2)(i) and 1.501(c)(4)-1(a)(2)(ii).

Your primary activity of buying, developing, and selling property to the general public does not promote social welfare. Although the community may indirectly benefit from an increase in population and business enterprises, the primary beneficiaries are the individuals and businesses that purchase the property. Revenue Rulings 64-187 and 67-294 illustrate activities that promote social welfare and provide community benefit by confining their programs to an economically depressed area and overcoming substantial, persistent unemployment. Your purchase, development, and sale of property to the general public is not limited by any such circumstances (no government designations of the D area and typical sales are for family homes or businesses looking to expand) and any benefit to the community as a whole is incidental and insubstantial.

Even if your property sales to the public did promote social welfare, the activity, as it is operated, is a trade or business similar to that ordinarily carried on for profit. Your properties are priced for cost recovery (priced to encourage lot sales and development of lots), offered to anyone seeking residential, commercial, or industrial

property (to attract businesses and residents to D), and only differ from a for-profit organization in that your board of directors is not compensated. The majority of your revenues and expenses are devoted to the purchase, development, and sale of property.

You are similar to the organizations described in Rev. Rul. 70-535 and People's Educational Camp Society, Inc., because you are primarily engaged in business activities rather than activities that promote social welfare. The majority of your revenues and expenses are related to the activity of purchasing, developing, and selling property to the general public.

Conclusion

Based on the facts presented above, you do not meet the requirements for tax exemption under IRC Section 501(c)(4) because you are not operated primarily for the promotion of social welfare and you are conducting a business with the general public in a manner similar to for-profit organizations. Accordingly, you are not exempt under 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 Determination 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
PO 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