



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

Date:
02/08/2023
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Number: **202318020**
Release Date: 5/5/2023

UIL: 501.03-00, 501.33-00

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)(3). 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.

Because you don't qualify as a tax-exempt organization under IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

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: 12/13/2022

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date Application Submitted

C = Date of Incorporation

D = State of Incorporation

UIL:

501.03-00

501.33-00

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)(3). 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)(3)? No, for the reasons stated below.

Facts

You submitted Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code on B.

You attest that you were incorporated on C, in the state of D. You attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of the IRC Section 501(c)(3), that your organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that your organizing document contains the dissolution provision required under IRC Section 501(c)(3).

You attest that you are organized and operated exclusively to further charitable purposes. You attest that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). Specifically, you attest you will:

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially

- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s)
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

You state in your application you are a homeowners association and you are to provide care and maintenance of grounds and to organize homeowner events.

Detailed information was subsequently requested, and you provided a copy of your Articles of Incorporation. This document indicates:

- You are organized and shall be operated exclusively for nonprofit purpose.
- Your purposes are to administer the common areas and other facilities of the Association from the benefit of said members in accordance with the provisions of your Declaration.
- You provide for the maintenance of said common areas and facilities.
- You enforce covenants and restrictions relating to the use of the common areas and facilities.
- You levy and collect assessments against your members
- You acquire by purchase, lease or otherwise, lands and interest in lands, and to own, hold, improve, develop, and manage any real estate so acquired.
- You make and carry out contracts of every kind and character which may be necessary or appropriate to the accomplishment of any of the purposes of the corporation.

Per your FAQ on your website, everyone who purchases a home in the neighborhood is automatically a member. Your covenant also states, in addition to your corporate purposes above, you enforce the rules and covenants set forth by the developer, maintain and improve all of the common areas in the development for the benefit and use and enjoyment of your members. The common properties include walkways, activity surfaces, planting structures, equipment and irrigation systems. Your website also indicates you will organize community events for homeowners, maintain mailboxes and locks, and approve building and landscaping requests.

You host several social and recreational activities throughout the year, including an easter egg hunt, summer kick-off party, annual garage sale, back to school party, and holiday light tour with horse drawn sleigh rides. All events are open to your residents. The events happen in the park located in the center of the development. There is no charge for these events, and they are funded by the annual dues of your members, which are determined by the maintenance requirements of the park, annual events, and other administrative costs. The park is owned by the city and maintained by you. You also enforce covenants and assess fees to accomplish your purpose.

Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious, scientific, or educational purposes, where no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1 (a)(1) states that, in order for an organization to be exempt under IRC Section 501(c)(3), it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(d)(1)(ii) states that an organization is not organized and operated exclusively for charitable purposes unless it serves a public rather than a private interest. To meet this requirement that it serve a public purpose, an organization must establish that it is not organized or operated for the benefit of private interests.

Revenue Ruling 75-286, 1975-2 C.B. 210 held that a nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefitting the community as a whole as well as enhancing members' property rights, will not qualify for exemption under IRC Section 501(c)(3).

In Benedict Ginsberg and Adele W. Ginsberg v. Commissioner, 46 T.C. 47 (1966), exemption was retroactively revoked for a corporation previously exempt under IRC Section 501(c)(3) that was organized to conduct the dredging of certain waterways. The property owners adjacent to the waterway were the only financial contributors to the organization. It was held that the corporation was organized and operated primarily for the benefit of those persons owning property adjacent to the waterways dredged rather than for public or charitable purposes.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in IRC Section 501(c)(3). You have failed to meet the organizational and operational requirements, as explained below.

You fail the organizational test because your Articles of Incorporation empower you to engage in activities that are not in furtherance of one or more exempt purposes and does not include language that limits your purposes to one or more exempt purposes. You are not organized exclusively for exempt purposes per Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i).

You are not operated exclusively for any IRC Section 501(c)(3) exempt purpose. Your activities of collecting funds from membership dues and fee assessments to fund activities, enforce covenants, mailbox upkeep, utility expenses and maintain and improve areas used by your members provides direct benefits to your members that

are more than insubstantial in nature. In addition, you conduct substantial social and recreational activities for the benefit of your members. For these reasons, you do not satisfy the operational test requirements to be recognized as exempt under IRC Section 501(c)(3) of the Code. See Treas. Reg. Section 1.501(c)(3)-1(c)(1) and Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are similar to the organization described in Revenue Ruling 75-286. Your membership is limited to the home owners of your development and your covenant indicates that the fees and assessments received from your membership specifically provide activities and maintain privately used land for your members. These activities, in addition to the social and recreational activities you conduct, serve private rather than public interests and are not useful and beneficial to the general public as a whole. Therefore, you are not operated exclusively for an exempt purpose under IRC Section 501(c)(3).

You are also similar to the organization in Benedict Ginsberg and Adele W. Ginsberg v. Commissioner. Your members are your only contributors. Through the maintenance of common areas and your social activities, you are organized to provide a benefit to the homeowners in your development. These activities are substantial in nature and do not provide any evidence that they are serving a public purpose or any other exempt purpose within the meaning of IRC Section 501(c)(3). Thus, you do not meet the operational requirements for exemption under this section.

Conclusion

Based on the information you provided, you are not organized or operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). Your Articles of Incorporation do not limit your purposes to one or more purpose within IRC Section 501(c)(3). Also, your activities indicate you conduct substantial social and recreational activities and are operated primarily for the private interests of your members, which are substantial non-exempt purposes. Accordingly, you do not qualify for exemption under IRC Section 501(c)(3). Donations to you are not deductible.

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