



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

Date:
03/13/2023
Employer ID number:

Tax years:
All
Person to contact:

Release Number: 202323013
Release Date: 6/9/2023
UIL Code:501.04-00,
501.04-06, 501.04-07

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:
January 11, 2023
Employer ID number:

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

Legend:

B = state
C = date
D = street
E = city
F = number

UIL:

501.04-00
501.04-06
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 formed in B on C as a non-profit corporation. Your Articles of Incorporation indicate that your purpose is the "administration and management of a Dock Owners Association by and for the benefit" of specific residential lots named in the Articles. The administration and management duties you conduct include "the administration and management of the utilization, maintenance and repair of Docks, Boat Slips, bulkheads, piers and Easement Areas" set forth in your Declaration of Covenants, Easements and Restrictions.

Your by-laws indicate that your membership is made up of the owners of the residential lots named in your Articles of Incorporation. Each member of your association is an owner of a lot in the D residential area of E.

Your application for exemption further clarifies your activities as providing maintenance, repairs, and support of recreational use of F boat slips with attached floating docks for use by your members. Your activities are funded through annual assessments of your member homeowners. Your application further indicates that the floating docks and boat slips you maintain are privately owned by you and located in a gated area that only your member homeowners are able to access.

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(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 primarily for the purpose of bringing about civic betterments and social improvements and is not an action organization as set forth in Treas. Reg. Section 1.501(c)(3)-1.

Revenue Ruling 69-280, 1969-1 CB 152, describes an organization formed to provide maintenance of exterior walls and roofs of homes of members who owned houses in a development. It was held that the organization was operated primarily for the private benefit of members and not operated primarily for the common good and general welfare of the people of the community. The services provided to members included maintenance of the exterior walls and roofs of the individual units. If a person purchases a unit in the housing development, he is required to become a member of the organization. The organization is supported entirely by annual dues charged members. The dues are based on the estimated expenses of the organization plus an amount for reserves to cover large expenditures, such as replacement of roofs.

Revenue Ruling 74-99, 1974-1 C.B. 131, modified Rev. Rul. 72-102 and held that a homeowners association, in order to qualify for exemption under Section 501(c)(4) of the Code, must, in addition to otherwise qualifying for exemption under 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.

In Flat Top Lake Association v. United States, (1989 4th Circuit) 868 F.2d 108, the Court held that a homeowners association did not qualify for exemption under IRC Section 501(c)(4) of the Code because it did not benefit a "community" bearing a recognizable relationship to a governmental unit and its common areas or facilities were not for the use and enjoyment of the general public.

Application of law

You were formed and are operated to maintain boat slips and floating docks for the exclusive use of your member homeowners. Rather than promoting in some way the common good and general welfare of the people of the community, you serve a small group of homeowners, your members. Because you are operated exclusively for the private benefit of your members rather than for the benefit of the community as a whole, you are not operated exclusively for the promotion of social welfare within the meaning of Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i). Therefore, you are not organized and operated exclusively for the promotion of social welfare as required by IRC Section 501(c)(4).

Rev. Rul. 69-280 describes an organization formed to provide maintenance of exterior walls and roofs of homes of members. It was held that the organization was operated primarily for the private benefit of members. Similar to the organization in that ruling, your members are comprised of owners of property in the D residential area who pay annual dues used to maintain boat slips and floating docks for their private use rather than for the community as a whole. As a result, you are not operated primarily for the common good and general welfare of the people of the community.

Similar to Flat Top Lake Association, you do not meet the criteria described in Rev. Rul. 74-99 that must be met for a homeowners association to qualify for exemption under IRC Section 501(c)(4). Like Flat Top Lake, you do not serve a “community” which bears a reasonable recognizable relationship to an area ordinarily identified as governmental and you maintain a private road that is for the exclusive use of your member property owners, rather than the general public.

Conclusion

Based on the information submitted, you are not organized and operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(4). Rather, you are organized and operated primarily for the private interests of your members. You do not promote the social welfare of the community as a whole and do not qualify for exemption 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