



**Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities**

Date:  
05/29/2024  
Employer ID number:

Form you must file:

Tax years:  
All

Person to contact:

Release Number: 202434013  
Release Date: 8/23/2024  
UIL Code: 501.04-00,  
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](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 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

Date: 03/21/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

**Legend:**

B = State of Incorporation

C = Date of Incorporation

D = Subdivision

E = County

F = City

G = Units

**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.

**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 nonprofit corporation. Your Articles of Incorporation state that you are organized to provide an entity to care for D as set forth in your Declaration of Protective Covenants, Easements, Party Wall Provisions, Conditions and Restrictions, your Bylaws, and the B Nonprofit Corporations Act. Further, you are organized to promote the health, safety and welfare of the owners of the parcels within D.

The residential units that you oversee are individually and privately owned. Each unit is joined by a party wall. The gated courtyard and secured parking are behind the condominium building for owners' use. You jointly depend on certain resources, building systems, and assets which you share for the function and appreciation of each individual unit. You are responsible for the management of operations and maintenance of the property and guide your collaborative contribution of members.

Your Bylaws state you will maintain:

- All shared building systems
- All gates & intercom systems

- Mailboxes
- Landscaping, walkways, stairs, courtyard and other surfaces
- Required annual plumbing and fire sprinkler testing, including annual backflow preventer testing and fire-alarm and fire-sprinkler testing
- Annual power-washing, dryer vent, window/screen cleaning
- Annual donation & installation

Your Bylaws also state that you are exempt from the B Homeowners Association Act since you are “not an HOA”.

You are supported by monthly dues and annual assessments collected from your members, that consists of the individual, private owners of the residential units. Your various expenses include an unrelated property manager, utilities, repairs, insurance, janitorial, fire alarm, landscaping, and legal & accounting fees.

You submitted maps detailing the properties you manage, outlining secure parking areas and the property perimeter. You went on to diagram there is no public or community access from one of the fronting streets; only owner private access. There are secure pedestrian and vehicle gates for owners and no public 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.

Rev. Rul. 74-17, 1974-1 C.B. 130, states that an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, with membership assessments paid by the unit owners does not qualify for exemption under IRC Section 501(c)(4). The ruling further states that by virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner’s acquisition and enjoyment of his property in the condominium. In addition, condominium ownership necessarily involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners.

Rev. Rul. 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 IRC Section 501(c)(4), it 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 streetlights, 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. 78-86, 1978-1, C.B 152 An arrangement whereby merchants join together to provide parking for their customers serves the merchants' private interests by encouraging the public to patronize their stores. Rather than providing their own parking, merchants are able to join together to provide a common parking facility in which all share the benefits. Thus, although there may well be some public benefit derived it cannot be said to be operated primarily for social welfare purposes under section 501(c)(4). Further, carrying on a business with the general public in a manner similar to organizations that are operated for profit does not further exempt purposes under IRC Section 501(c)(4).

In Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962), stated that an organization formed primarily for the private interests of its members due to the services the organization provided was not formed exclusively for the promotion of social welfare due to the large nature of its economic and private cooperative undertaking. Recreational accessories of the cooperative were made available for use by the general public. However, this case highlights that while a private project may touch an appreciable segment of the people or a large physical area and yet, for want of the considerations mentioned, not be converted into a civic or social undertaking. Classification as 'civic' or 'social' depends upon the character - as public or private - of the benefits bestowed, of the beneficiary, and of the benefactor.

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 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.

In Ocean Pines Association v. Commissioner, 672 F.3d 284 (4th Cir. 2012) the Fourth Circuit held that parking lots and an ocean-front beach club owned, maintained and operated by a Section 501(c)(4) residential association benefited the private interests of its association members and their guests rather than the general public and did not promote social welfare.

#### **Application of law**

IRC Section 501(c)(4) provides for the exemption from federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. You do not meet the requirements of this section because your sole activity benefits your members who are residential property owners in the building you maintain. You do not show that you provide benefits to the community as a whole. Pooling member funds to pay for the maintenance and preservation of a single, specific residential facility and for the secured, gated common areas does not promote the common good and general welfare of the people of the community. Therefore, you do not meet the exemption requirements of Section 501(c)(4). See Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i).

You are similar to the organization described in Rev. Rul. 74-17. You are simply an aggregation of condominium unit owners bound together in a condominium housing project to provide for the management,

maintenance, and care of the common areas of the project. You exist for the substantial private interest of your members, and the benefits available to your members are not available to the public at large.

Per the requirements outlined in Rev. Rul. 74-99, the condominium housing project that you maintain represents a very small number of units (G). Therefore, you are not reasonably recognizable to an area ordinarily identified as a governmental unit. While you do provide access to some common areas that are accessible by the general public, this access is only available during normal business hours. Any benefits that you provide are geared primarily toward your members and not for the general public. Therefore, because you are not operated exclusively for the promotion of social welfare and you are formed for substantial private interests, you do not qualify for exemption under Section 501(c)(3). See Flat Top Lake Association, Lake Forest, Inc., and Ocean Pines Association.

### **Your position**

Once advised of the proposal to deny your application you provided a revised map of your property indicating areas that are zoned as commercial by the land use code of the F and therefore publicly accessible. Previous information received by the IRS was incorrectly described and misrepresents your activities. This land use code designation means that every ground floor space, including the courtyard and the common bathroom, are publicly accessible during hours of operation. When open, any member of the public may have the right to enter. You stated there is public and community access through four of the storefronts on one street and through two on another.

Over the years each ground level unit has been used in various legally permissible ways as stated by the city's land use code, including retail, office, etc. You hold an annual community event for the public and are currently developing an event program that provides additional public access to the community space, especially the courtyard, bathroom and work/live spaces.

### **Our response to your position**

While the land use code allows for these certain provisions, nothing contained within your Covenants/Bylaws references any commercial property activities or use. Further, no portions of your activities described shared use of residential and commercial spaces. Even if conducting these activities, they do not meet qualifications under IRC Section 501(c)(4) as they serve the interests of participating members in an arrangement of this type for their businesses. See Rev. Rul. 78-86. Regardless, the shared use of your space would not change the conclusions that your primary purpose is to serve the selected members living in D, to maintain the building and common areas of D, and to serve primarily the private interests of your owner-members. The partial access to storefront properties does not primarily promote social welfare nor does it promote the common good and general welfare of the people of the community.

### **Conclusion**

Based on the information provided, 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 IRC Section 501(c)(4). Therefore, you do not qualify for exemption under this section.

### **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](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