



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

Date:
10/10/2024
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

Check if 501(c)(3) denial

Check if valid POA

Release Number: 202501016
Release Date: 1/3/2025
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.

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

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**Department of the Treasury
Internal Revenue Service**

Date: August 19, 2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

UIL:

501.04-00

501.04-07

Legend:

B = State

C = Date

D = Name

E = Number

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 B, on C as a property owner's association as defined by B's property code. You are applying for exemption after being auto-revoked for failure to file the Form 990 for three consecutive years.

Your corporate purpose is to provide for the acquisition, construction, management, maintenance, and care of corporate property. Your Form 1024-A states you are maintaining the landscapes for each homeowner and resolving neighbor disputes using the Restrictive Covenants and Bylaws when needed.

Your bylaws state that you:

- Are a property owner's association which is defined and governed by state code and was created to manage the D.
- Have the duty of maintaining, managing, and operating the common areas of the D.

Your Declaration of Covenants, Conditions, and Restrictions (DCCR) state the qualifications for your membership as, "each owner shall automatically become, and must remain, a member in good standing during such owner's period of ownership of such lot or portion thereof. Such membership shall be appurtenant to each

lot. The membership terminates automatically whenever such person or entity ceases to be an owner. There are currently E members.

The DCCR further states that your goal is to benefit the property in general, the developer, and successive owners. The DCCR explains you provide services such as mowing grass, grounds care, landscaping, garbage pickup, and road/median maintenance. The DCCR also states that the restrictions are for the purpose of protecting the value and desirability of the property. The DCCR also provides details about a private street and perimeter wall in D which you are responsible for.

Your activities include maintaining the landscapes for each homeowner. This involves providing lawn services, including the back and front of each home, pruning of bushes, sprinkler maintenance, cleaning of common areas, and any exterior maintenance that residents might need. Your property is primarily fenced in, which includes fencing on neighboring non-member properties. This encompasses essentially three of four sides of your community. The side which does not have a fence, includes a cul-de-sac and a gate over the 'rear' road entrance to your community. There is also a gate at the entrance. You state the areas inside the community are not open to the public.

You further explained that there are several areas that you maintain that are open to the public. This includes the cul-de-sac area which may be used as a parking lot but later stated this is primarily used by members. You further explained that the public can access the interior of your common areas from the back, which is the cul-de-sac area. You stated that while you allow the public to walk through the neighborhood as a form of exercise, you do not allow the public to use any facilities that the residents pay to use through dues.

Members' dues fund your activities. Lawn maintenance is your primary expense. Other expenses consist of insurance, water, and electricity.

Law

IRC Section 501(c)(4) provides for the exemption from federal income tax of organizations not organized for profit but operated exclusively for the promotion of social welfare.

Treasury Regulation Section 1.501(c)(4)-1(a)(1) states a civic league or organization may be exempt as an organization described in IRC Section 501(c)(4) if it is not organized or operated for profit and it is operated exclusively for the promotion of social welfare.

Treas. Reg. 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 betterment and social improvements.

Rev. Rul. 74-99 1974-1 C.B. 131, held that for homeowner's associations to qualify under IRC Section 501(c)(4) it must 1) serve a 'community' bearing a reasonable recognizable relationship to an area recognized as governmental, 2) it must not conduct activities directed to exterior maintenance of private residences, and 3) the common areas must be for the use and enjoyment of the general public. Furthermore, it held that homeowner's associations have a prima facie presumption of private benefit for members, although certain circumstances may overcome this presumption. It also clarified that the common areas were limited to

things of 'direct governmental concern' such as roads, parks, streetlights, where access for use and enjoyment is extended to the general public, as opposed to controlled use or access restricted to members.

Rev. Rul. 80-63, 1980-1 C.B. 116, clarifies Rev. Rul. 74-99, and provides answers to specific questions as to whether the conduct of certain activities will affect the exempt status under Section 501(c)(4) of otherwise qualifying homeowners' associations. The ruling states 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.

In Lake Petersburg Assn. v. Commissioner, 33 T.C.M. (CCH) 259 (1974), the Tax Court held that an organization formed to construct a lake and develop lakeshore property, including recreational areas was not exempt under IRC Section 501(c)(4). The reason for this decision was that the organization benefitted its members only, as the members were the only ones who could enjoy the facilities and the lake environment. The original public benefit idea was determined to be indirect and remote.

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) 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(a)(1) because you are not operated exclusively for the promotion of social welfare. Rather, you are primarily formed and operated for the private benefit of your member homeowners and therefore do not qualify for exemption under Section 501(c)(4).

You do not meet the provisions of Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i) because 1) you have a defined limited membership consisting of homeowners in D, 2) your membership is required to pay fees as provided in your DCCR, and 3) your members receive a benefit for said fees. These facts show that you do not promote the common good and general welfare of the people of the community.

You are not a "community" as described in Rev. Rul. 74-99 and Rev. Rul. 80-63 because the general public is not significantly benefitting from your operations. The subdivision which you maintain consists of less than 50 members and does not bear a recognizable relationship to an area ordinarily identified as a governmental subdivision. In addition, the DCCR further states that your goal is to benefit the property in general, the developer, and successive owners.

Similar to the organization in Lake Petersburg Assn, which was denied exemption, you were formed to develop a property for the benefit of the developer and the subsequent owners, who are members. Any public benefit conferred to the public is remote.

You are like the organization in Flat Top Lake Association. Although you allow the public to walk through the neighborhood as a form of exercise the primary beneficiaries of your activities are your members. Any benefits

to the community are not sufficient for you to show that you are operating within the meaning of IRC Section 501(c)(4).

Conclusion

Based on the information submitted, we conclude that you are not an organization described in IRC Section 501(c)(4). You are not a “community” within the meaning of the regulations because the general public is not significantly benefitting from your operations. You are operating for the benefit of your members, who are lot owners in D. There is little benefit conferred to the general public. Therefore, you fail to qualify 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