



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

Date:
10/17/2024
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Release Number: 202502006
Release Date: 1/10/25
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



**Department of the Treasury
Internal Revenue Service**

Date: August 19, 2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = State

C = Date

D = Number

E = Name

F = Law

G = Name

x percent = Number

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. Your Articles of Incorporation state that your specific purpose is to provide for the management, maintenance, and preservation of E.

Your bylaws state your purposes are to act as an agent for the owners of the property comprising E and more specifically described in F.

Your bylaws further state the qualifications for your membership in that 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 connected to each lot, or portion thereof, and may not be severed from or held separately therefrom. The membership of a person or entity in you shall terminate automatically whenever such person or entity ceases to be an owner.

You indicated in your narrative that you are a homeowner's association and have D that belong to each member. Your revenue comes from yearly home dues that are entirely put back into E which are used to fund a

24-hour security guard service and maintenance of the common areas, repairs to the private street, and drainage ditches throughout E. You further indicated that x percent of your revenue is used to fund the 24-hour security service. You explained that access to the lots in E is only available by using the G road and that your common areas are restricted from public access since G road is a private street and access through the gate is generally only granted to members and their visitors.

You stated:

- You are formed for the good of all property owners who live in E and on G road;
- You have been filing the Form 1120-H since your inception.

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. Further, exemption shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(4)-1(a)(1) states a civic league or organization may be exempt as an organization described in Section 501(c)(4) of the Code 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 betterments and social improvements.

Revenue Ruling 74-99, 1974-1 C.B. 131, clarifies the circumstances under which a homeowners' organization may qualify for exemption under IRC Section 501(c)(4). Several factors lead to the prima facie presumption that homeowner's associations are essentially and primarily formed and operated for the individual business or personal benefit of their members, and, as such, do not qualify for exemption under Section 501(c)(4). However, the ruling goes on to state that a homeowner's association may in certain circumstances overcome the presumption and qualify for recognition of exemption under Section 501(c)(4) by (1) serving a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

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 IRC 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, 868 F.2d 108 (4th Cir. 1989), 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 your activities do not primarily promote civic betterment or social welfare. You are primarily operating for the convenience and benefit of your members which are the lot owners in E. This is evidenced by the fact that you are providing 24-hour security and maintenance of G Road which is a private road. Access is only granted to your members and their visitors through a gate.

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 only D homeowners in E, 2) your membership is required to pay dues, and 3) your members receive a benefit for said dues. 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. You restrict the general public from access to E. In addition, you maintain E which has a small membership of only D. E also does not bear a recognizable relationship to an area ordinarily identified as a governmental subdivision.

Like the organization in the court case, Lake Petersburg Association, your activities only benefit your members. This is evidenced by the fact that x percent of your revenue is used for the 24-hour security service and that access is restricted to your members and guests. Therefore, you do not meet IRC Section 501(c)(4).

You are similar to the organization described in the court case Flat Top Lake Association. Your activities primarily benefit your members rather than the community at large. You are not primarily promoting in some way the common good and general welfare of the people of a community as Treas. Reg. Sec. 1.501(c)(4)-1 requires and consequently you do not qualify for exemption under 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 E. 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