



Department of the Treasury

Internal Revenue Service

P.O. Box 2508

Cincinnati, OH 45201

Number: **201548020**
Release Date: 11/27/2015

Date: 8/31/2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.04-07

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(4) of the Internal Revenue Code (the Code). 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 federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 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 contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Letter 4040 (Rev. 7-2014)
Catalog Number 47635Z

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*

Letter 4040 (Rev. 7-2014)
Catalog Number 47635Z



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: 5/21/2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

X = Date

Y = State

UIL:

501.04-07

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(4) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under section 501(c)(4) of the Code? No, for the reasons stated below.

Facts

You were incorporated on X in the State of Y. You were formed to:

- a. Make and establish reasonable rules and regulations governing the use of Condominium Units and Common Property in the Condominium as said terms may be defined in said Declaration of Condominium to be recorded.
- b. Levy and collect assessments against members of the Corporation to defray the common expenses of the Condominium as may be provided in said Declaration of Condominium and in the Bylaws of this Corporation which may be hereafter adopted, including the right to levy and collect assessments for the purpose of acquiring, operating, leasing, managing and otherwise trading and dealing with such property, whether real or personal, including Condominium Units in the Condominium which may be necessary or convenient in the operation and management of the Condominium and in accomplishing the purposes set forth in said Declaration of Condominium.
- c. Maintain, repair, replace, operate and manage the Condominium and the property comprising same, including the right to reconstruct improvements after casualty and to make further improvement of the Condominium property, and to make and enter into any and all contracts necessary or desirable to accomplish said purposes.

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Catalog Number 47628K

- d. Contract for the management of the Condominium and to delegate to such contractor all of the powers and duties of the Association except those which may be required by the Declaration of the Condominium to have approval of the Board of Directors or membership of the Corporation.
- e. Acquire and enter into, now or at any time hereafter, leases and agreements whereby the Association acquires leaseholds, memberships and other possessory or use interests in land or facilities, including, but not limited to, swimming pools, tennis courts and other recreation facilities, whether or not contiguous to the lands of the Condominium, to provide enjoyment, recreation or other use or benefit to the owners of the Condominium Units.
- f. Enforce the provisions of the Declaration of Condominium, these Articles of Incorporation, the Bylaws of the Corporation which may be hereafter adopted, and the rules and regulations governing the use of the Condominium as the same may be hereafter established.
- g. Exercise, undertake and accomplish all of the rights, duties and obligations which may be granted to or imposed upon the Corporation pursuant to the Declarations of the Condominium aforementioned.

You are a small community with less than two dozen privately owned condos. The owners of the units hold equal interest in ownership of your common areas. Homeowners are required to pay monthly dues to cover property insurance, city water, street lighting, lawn care, repairs and maintenance of the exterior of the buildings and to maintain the parking lot. The dues are adjusted from time to time to cover the increased cost of materials and services. Due to the small size of the community, you never accumulate any significant excess funds, and when a significant repair is needed, you call for a special assessment to cover that event.

You provided a sketch showing the cul du sac where your condos are located. The homes are clustered in five buildings with no facilities or common areas that may be used by the general public. Your parking is reserved for residents and guests.

You enforce all covenants to preserve the private property of the residents. You also:

- Provide all maintenance to exterior of the homes which includes roofs and grounds.
- Maintain property insurance for damage up to full replacement of the exterior of the home.
- Provide liability coverage to a limit.
- Purchase water for households in bulk from the city. The water cost is included in your monthly homeowner's association fee paid by each individual owner.

Law

Section 501(c)(4) of the Code 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 1.501(c)(4)-1 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 paragraph (c)(3) of Regulation 1.501(c)(3)-1.

In Rev. Rul. 74-17; 1974-1 C.B. 130 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 section 501(c)(4) of the Code. Condominium ownership 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. Since the organization's activities are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare.

Rev. Rul. 74-99; 1974-1 C.B. 131 held a homeowners association, in order to qualify for exemption under section 501 (c) (4) of the Code, must:

- Serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental,
- Not conduct activities directed to the exterior maintenance of private residences, and
- The common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

In Flat Top Lake Ass'n 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 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 under Section 501(c)(4) of the Code because you are not operated exclusively for the promotion of social welfare and your net earnings inure to the benefit of your association members.

Likewise, you do not meet the requirements of Treasury Regulation 1.501(c)(4)-1 because you are not primarily engaged in promoting the common good and general welfare of the people of the community. You, on the other hand, limit your services to your member condo owners. As noted in the above facts, every purpose for which you were formed is directed towards the needs of your members, not the people of the community. By providing exterior maintenance to condos, property insurance, and other services to your property owners, you are serving the private interests of the member owners, not the people of the community.

You are nearly identical to the organization that was denied exemption in Rev. Rul. 74-17; 1974-1 C.B. 130. Like that organization, you do not to promote the interests of a community. Instead, you maintain and regulate a privately owned complex of less than two dozen property owners. Therefore, you do not qualify for exemption because you operate essentially for the private benefit of your members.

Contrary to Rev. Rul. 74-99 and Flat Top Lake Ass'n v. United States , you:

- Do not serve a community that resembles an area that could reasonably be identified as governmental,
- Provide exterior maintenance to private residences, and
- Do not own or maintain common areas or facilities for use and enjoyment of the general public.

These factors show your purposes and activities are not exclusively promoting social welfare and are not primarily promoting the common good and general welfare of the community. Instead, you are furthering the private interests of your members.

Conclusion

Because you operate only for the benefit of your members and not for the social welfare or common good of the community in general, you do not qualify for exemption under section 501(c)(4) of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts 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 he or she hasn'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 provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement 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 he or she received it.

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.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Director, Exempt Organizations

Enclosure:
Publication 892

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Catalog Number 47628K