



IRS, Private Letter Ruling, Section 501 - Exemption from Tax on Corporations,
Certain Trusts, etc, PLR 202333005

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IRS, Private Letter Ruling, Section 501 - Exemption from Tax on Corporations, Certain Trusts, etc,
PLR 202333005

Department of the Treasury
Internal Revenue Service
Private Letter Ruling

PLR 202333005 - Section 501 - Exemption from Tax on Corporations, Certain Trusts, etc

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

Release Number: 202333005
Release Date: 8/18/2023
UIL Code: 501.04-00

Date:
05/23/2023

Employer ID number:

Form you must file:
1120

Tax years:
All

Person to contact:

Dear [redacted data]:

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.

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PLR 202333005

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: 3/28/2023

Employer ID number:

Person to contact:

ID number:

Telephone:

Fax:

Legend: UIL: B = Date 501.04-00 C = State D = Name E = Number F = Number

Dear [redacted data]:

We considered your application for recognition of exemption from 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 formed on B, in the state of C as a nonprofit mutual benefit corporation. Your Articles of Incorporation state that your specific purpose is to maintain the subdivision's roads. You are a successor to a previous nonprofit corporation, and you assumed 100% of their assets. The previous organization was not exempt under IRC Section [501\(c\)\(4\)](#) .

Your bylaws state that your primary objective and purpose is to maintain the roads in your subdivision, for use by the community and the public, to engage in such other activities that will assist in the achievement of maintaining the roads in your subdivision and to carrying out the terms listed in the Declaration of Covenants, Conditions, and Restrictions. Your bylaws further state that you are a membership organization and that members of your organization are defined in the Declaration of Covenants and Conditions, and Restrictions' agreement as established by the subdivision's developer. The Declaration of Covenants and Conditions, and Restrictions' agreement defines each of your members as being lot owners and as such shall be entitled to one vote for each lot owned. Only one vote may be cast per lot owned. There are E members.

Your primary activity is road maintenance and repair of the D road that each lot owner in your subdivision has access to. The road that is maintained is about F miles long. It is bordered on three sides, by lots that are owned by your members, and it finishes or dead ends at a member's home where there is a private water source. By agreement, the private water source is made available to fire trucks for firefighting purposes to serve the community and the adjacent wilderness.

This road was initially created by the developer several years ago, who originally parceled out the land, which did not include the road. At that time, the road was simply a bulldozed strip covered with local shale which disintegrated, turning into slick clay in wet weather. Since that time, you and your predecessor have taken care of the road and you devote [redacted data]% of your annual budget to its improvement and upkeep, which includes snow removal, road blading, grading, and compacting. The remainder of your funds is spent on your overhead and insurance expenses.

You explained that access to the lots in your subdivision is only available by using the D Road. Entrance to your subdivision is not restricted or gated in any way, and there are no signs announcing to all that your subdivision is a "Members Only" enclave. A map of your subdivision that you provided shows that anyone can

get to the entrance of your subdivision from a county road by traveling upon a private road in which you enjoy an easement for use of the .1 mile portion of it. The map of your subdivision does not show that it is located near a municipal area. You explained that the road is open to residents, service providers, UPS and other mail delivery services, utility services, friends, relatives, and visitors to the residents, etc. You further stated that road is open to the public to use unfettered for recreational activities, such as biking or other purposes. You stated the public is often seen traversing the road for views and biking. You are funded by membership fees.

Law

IRC Section **501(a)** generally provides that an organization described in Section **501(c)** is exempt from federal income tax. An organization is described in IRC Section **501(c)(4)** and exempt from tax under Section **501(a)** if it satisfies the requirements applicable to such status.

IRC Section **501(c)(4)(A)** provides for federal tax exemption for two types of organizations:

- a. Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, and
- b. 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.

IRC Section **501(c)(4)(B)** provides that Section **501(c)(4)(A)** 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 an organization may be exempt if: (i) it is not operated for profit and (ii) it is operated exclusively for promoting 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 **72-102**, 1972-1 C B 149, describes a non-profit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for use of the residents that was found to be exempt under IRC Section **501(c)(4)**. The ruling describes what may constitute a community, which may be exemplified in a neighborhood, precinct, subdivision, or housing development. It states by administering and enforcing covenants, and owning and maintaining certain non-residential, non-commercial properties of the type normally owned and maintained by municipal governments, the organization is serving the common good and the general welfare of the people of the entire development.

Revenue Ruling [74-99](#) , 1974-1 C.B. 131, clarifies the circumstances under which a homeowners' organization like the one described in Revenue Ruling [72-102](#) may qualify for exemption under IRC Section [501\(c\)\(4\)](#) . According to this revenue ruling, 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.

In *Lake Petersburg Association v. C.I.R.*, T.C. Memo [1974-55](#) , [33 T.C.M. \(CCH\) 259](#) , *T.C.M. (P-H) P 74,055* , *1974 PH TC Memo 74,055* (1974), the association was an idea presented by the Petersburg Chamber of Commerce to help stimulate the economy in the surrounding area. A group of businessmen contributed capital and acquired capital from other sources such as the City, the Chamber and two banks, to obtain funding to purchase property and develop it. They formed an association, which required prospective owners to become dues-paying members. The dues helped finance the development of the lake and recreational facilities on said property. Use of the assets was limited to members and their guests. The Association's basis for their argument is that the organization was created to stimulate the economy and make it a better place to live, thereby fulfilling the requirement of a social welfare organization under Section [501\(c\)\(4\)](#) of the Code. The respondent argued that it was operated primarily for the benefit of its members and therefore did not qualify. The Court found that regardless of the original intent, the actual benefit went to the members and any economic benefits to the Petersburg citizens were "indirect and remote." Exemption was denied.

In *Rancho Santa Fe Association v. United States*, [589 F. Supp. 54](#) (D.C. S.D. Calif. 1984), the court held that the organization was entitled to exemption under IRC Section [501\(c\)\(4\)](#) despite the fact that some of its facilities were restricted to its members. The association supervised property inside the subdivision of Rancho Santa Fe by enforcing the covenants and establishing several boards, such as a planning and park boards, etc. It also functioned as a liaison between the community and the local government on issues such as maintenance of the rights-of-way and the sanitation system. In addition, the association loaned out its facilities free of charge to various public service organizations as well as to the schools. The court found that that the critical factor is that the association benefited the community it served and represented on an unrestricted basis. The court further stated that it was only where an association represents less than the entire community is it a concern whether the benefits of the association are made available to the general public, because in that situation the benefits which are restricted to the association of members are not benefiting the community as a whole. It was also found that the association performed the functions of a governmental entity and brought about civic betterments and social improvements that would be sorely missed by the Rancho Santa Fe community should they be lost or curtailed.

In *Flat Top Lake Association v. United States* (1989 4th Circuit), [868 F.2d 108](#) , the Court held that a homeowner's 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\(c\)\(4\)\(A\)](#) and Section [501\(c\)\(4\)\(B\)](#) , because you incorporated under the nonprofit mutual benefit law of C which allows your assets to be distributed to your members upon your dissolution. As the C nonprofit mutual benefit law allows your net earnings to inure to individuals, you are not organized primarily for the promotion of social welfare.

You were established to raise money through membership dues for the upkeep of a road that connects properties owned by your members within your subdivision. You dedicate 80% of your annual budget to the upkeep of the D road. It is recognized that you and the organization depicted in Revenue Ruling [72-102](#) share similarities in that you were originally established by a developer, and you maintain a road which is a property that is normally owned and maintained by municipal governments. However, since the D road leads exclusively to and from properties owned by your members, the benefits the road provides to your members are primary. Therefore, your activities do not primarily promote 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.

Further, you have not overcome the prima facie presumption advanced in Revenue Ruling [74-99](#) that states "that these organizations [homeowners' 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 IRC Section [501\(c\)\(4\)](#) ". Although the public has unfettered access to the road, the benefits of the upkeep and maintenance of the D road are enjoyed overwhelmingly by your members. Consequently, your activities of maintaining the D road are primarily conducted for the personal benefit of your members which prevents you from qualifying for exemption under IRC Section [501\(c\)\(4\)](#) .

Like the organization in the court case, [Lake Petersburg Association v. Commissioner](#) , your activities of maintaining a road that provides access to members' lots benefit only your members. Even though there is no gate, and the public may use the road, your activities are for the convenience of your members. Other benefits to the entire community are indirect and remote. Therefore, you do not meet IRC Section [501\(c\)\(4\)](#) .

You are not like the organization described in the court case [Rancho Santa Fe Association v. United States](#) . You are providing for the maintenance and upkeep of a dead-end road in a rural area. Therefore, it is reasonable to assume that the primary reason the public would use the D Road would be to visit one of your members or to provide services and goods to them since the D Road only leads to your members private residences and it does not lead to any recreational facilities such as a velodrome, park, a lake, a dedicated hiking trail, etc., or other venues from which a general public member can choose to visit. You are also not performing the functions of a governmental entity nor are you bringing about civic betterments and social improvements that would be sorely missed by the local community should they be lost or curtailed. Therefore,

you fail to qualify for exemption under 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 do not qualify for exemption under IRC Section **501(c)(4)** .

Conclusion

Based on the facts presented above, you do not meet the requirements for tax exemption under IRC Section **501(c)(4)** because you are not primarily promoting the general welfare and common good of the community. You operate primarily for the benefit of your lot owner members by maintaining a road that permits access to their lots. Further, your net earnings inure to the benefit of your lot owner members because you are incorporated as a mutual benefit corporation in C. Therefore, you do not qualify for exemption under IRC 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:

Street address for delivery service:

Internal Revenue Service

Internal Revenue Service

EO Determinations Quality Assurance

EO Determinations Quality Assurance

Mail Stop 6403

550 Main Street, Mail Stop 6403

PO Box 2508

Cincinnati, OH 45202

Cincinnati, OH 45201

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