

Internal Revenue Service

Appeals Office
San Jose Appeals, MS-7100
55 S. Market St., Ste. 440
San Jose, CA 95113

Department of the Treasury

Taxpayer Identification Number:

Person to Contact:

Release Number: **201335024**

Release Date: 8/30/2013

Date: June 3, 2013

Tax Period(s) Ended:

UIL: 501.03-15

Certified Mail

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective

Our adverse determination was made for the following reason(s):

- Organizations described in I.R.C. § 501(c)(3) and exempt under I.R.C. § 501(a) must be organized and operated exclusively for an exempt purpose. You have not established that you benefited a charitable class or that its non-exempt activities were insubstantial. You have failed to establish that you meet the requirements of I.R.C. § 501(c)(3) and Treasury Regulation § 1.501(c)(3)-1(d) in that you do not limit the recreational card game activities to only low income people with addictions.

Contributions to you are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

If you were a private foundation as of the effective date of the adverse determination, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely Yours,

Appeals Team Manager

Enclosure: Publication 892



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: JUN - 3 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = State

C = Date

D = City

UIL:

501.03-15

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

Do you qualify for exemption under section 501(c)(3) of the Code?
No, for the reasons outlined below.

Facts

You were formed as a nonprofit corporation in the state of B on C. Your stated purposes in your Articles of Incorporation are:

Said corporation is organized exclusively for charitable, educational and/or scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt

organizations under 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code.

The specific purpose of the corporation is to provide for the benefit and civil welfare of the community and region in which the corporation exists, with specific interest in promotion of adult sobriety and the general welfare of citizens of the State of (E).

You are conducting recreation/entertainment programs open to the general public for those over the age of 18 in the city of D where there are few alternatives to bars and casinos. You currently meet on Monday and Thursdays at a local venue. You do not require absolute abstinence for participation; you do promote community-minded sobriety during otherwise prolific times of alcohol and drug use, particularly during evening hours.

Your only programs consist of providing free and low cost tabletop gaming activities in a supervised non-alcoholic, sober environment, along with access to gaming accessories that are provided without cost to participants. You are promoting tabletop customizable games, such as card and miniature games (CCGs and CMGs); there is also a strong interest in promoting role-playing games (RPGs). Beginner players can learn and obtain free gaming materials solely for playing. Moreover, you have a redemption system-players get free decks and can learn additional games.

You operate two separate programs for game playing. These are tutorials and organized play. Your website indicates the tutorials are an open opportunity for anyone meeting the program's criteria (at least 18 years of age and a commitment towards sobriety during game play). Individuals may learn any of the games the program is presently promoting and receive a free deck of playing cards or materials, as available, for the experience. Tutorials are available at organized play events, though can be also arranged by appointment. Organized play involves structured gaming events on evenings as an alternative to patronizing bars and casinos.

Your programs are dedicated to promoting socialization among adults suffering addictions in their lives. You indicated individuals might relapse due to boredom and isolation. Moreover, you want to help those from falling into lifestyles that lead to such problems.

You stated that those with addiction histories are a distressed class and your recreational programs target lower income people because those with means generally have the resources available to address sobriety issues. In addition, you do not publically bill yourself as a treatment program and do not offer counseling or therapeutic type services. You also are not affiliated with any formal support groups

Future activities involve developing an online interactive price and reference guide for games, an online trading community guide, an online sellers market, and a classic bulletin board system.

You have a five person board, which you plan to compensate in the future. Furthermore, your founder/president has over 20 years experience in collectible and gaming genre activities

Your projected revenues are from gifts, grants, contributions and the solicitation of unused gaming materials from the gaming industry vendors, collectors, retailers and other players/gamers. Moreover, the for-profit gaming industry has provided you surplus bulk gaming materials for your recreational programs.

Your projected expenses are salaries, facility/occupancy expenses, and other related expenses to a social/recreational meeting place to host games.

Law

Section 501(c)(3): Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3) of the Code. An organization must not engage in substantial activities that fail to further an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the lessening of the burdens of Government.

Revenue Ruling 77-366, 1977-2 C.B. 192, provides that a nonprofit organization that arranges and conducts winter-time ocean cruises during which activities further religious and educational purposes are provided in addition to extensive social and recreational activities is not operated exclusively for exempt purposes and does not qualify for exemption under section 501(c)(3). The organization accomplished both charitable and non-charitable purposes through its cruises.

Better Business Bureau v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375 (1945), the Court held that if an organization is not operated exclusively for charitable purposes, it will not qualify for exemption under section 501(c)(3) if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

First Libertarian Church v. Commissioner of Internal Revenue, 74 T.C. 396 (1980), the Court stated that the church failed to show that it successfully segregated the clearly social and political aspects of its supper club meetings and its publication from its purpose to further the doctrine of ethical egoism. As the church operated for social and political purposes to more than an insubstantial degree, it fails to qualify for exemption under section 501(c)(3) of the Code. The court stated that an organization will not qualify for exemption if a non-exempt activity is more than an insubstantial part of its overall activities or if an activity has more than an insubstantial non-exempt purpose. The court explained, "Clearly the regulations and cases contemplate that a single activity may be carried

on for more than one purpose. If a substantial secondary purpose is not an exempt one, qualification under section 501(c)(3) will be denied."

Application of Law

You are not described in section 501(c)(3) of the Code because you are not organized and operated exclusively for charitable or educational purposes.

You do not meet the provisions of Section 1.501(c)(3)-1(a)(1) of the Regulations, because your stated purpose in your Articles of Incorporation is " *to provide for the benefit and civil welfare of the community and region in which the corporation exists, with specific interest in promotion of adult sobriety and the general welfare of citizens of the State of (E).*" This purpose is not limited to one or more of the purposes specified in the Code and Regulations.

You are not operating in accordance with Section 1.501(c)(3)-1(c)(1) of the Regulations. You have a substantial non exempt purpose of providing regular social and recreational activities to the general public to promote adult sobriety. For example, your organized game playing meets regularly and is composed of both tutorials and organized game play.

You do not meet the provisions of Section 1.501(c)(3)-1(d)(2) of the Regulations. Although some of your participants may be members of a charitable class, you are not conducting services exclusively to a charitable class. Furthermore, you have not explained how your game play activities you provide to the community exclusively further a charitable purpose in compliance with the requirements of section 501(c)(3) of the Code.

You are similar to the organization described in Rev. Rul. 77-366. You also have extensive social and recreational activities that are not consistent with the purposes described under section 501(c)(3) of the Code. For example, your only activity is providing organized game play including tutorials to the community to promote adult sobriety. You are devoting all your time, energy, and other resources to conducting the game play. Therefore, you are operating substantially for noncharitable purposes.

You are similar to Better Business Bureau v. United States. Although some of your activities may benefit a charitable class, a substantial portion of your activities is providing social and recreational activities open to the public. This precludes you from exemption under section 501(c)(3).

You are similar to the organization in First Libertarian Church v. Commissioner of Internal Revenue, as you too predominately provide extensive social and recreational activities. Therefore, you are not operated exclusively for exempt purposes described under section 501(c)(3)

Applicant's Position

You wrote you are nearly identical to a 501(c)(3) organization that fosters a supportive, physically active community for individuals who are recovering from alcohol and substance abuse and those who choose to live a sober life. Furthermore, you host events strictly and exclusively to provide a safe, sober environment for individuals who seek to avoid frequenting bars and casinos. You are not just a group of random people getting together to play games. Yours is a program dedicated to promoting socialization amongst individuals suffering addictions in their lives, or as a resource to avoid falling into lifestyles that lead to such problems. Your recreational program focuses upon providing alternative activities during otherwise prolific periods of substance use and the program addresses the primary cause of recidivism in addicts: boredom. You provide recreational activities

during periods that might otherwise be used for addictive behaviors influenced by boredom. These activities are therapeutic and rehabilitative. You therefore, qualify under section 501(c)(3).

Service Response to Applicant's Position

You failed to provide any additional information from which it can be concluded that your activities exclusively further or advance a purpose described in Section 501(c)(3). Although you provided the description of a similar organization exempt under Section 501(c)(3) whose operations you believe are like yours, similar to the organization in Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), you have the burden of proving that you satisfy the requirements for tax exemption. You have failed to provide enough information to prove to us that you are operating exclusively for purposes described in Section 501(c)(3).

Conclusion

Based on the above, we find that you are not organized and operated for exempt purposes within the meaning of section 501(c)(3) of the Code. Specifically, you do not meet the organizational test for exemption because the purpose in your organizing document is not limited to one or more of the purposes specified in the Code and regulations.

You do not meet the operational test for exemption because you are operating for a substantial non exempt purpose.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during

the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications. If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

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

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892