

DEN 0260

SERVICE

DEPARTMENT OF THE TREASURY  
Western Key District

91755

CERTIFIED MAIL

MAR 20 1998

Employer Identification Number:

Case Number:

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Applicant:

We have considered your application for exemption from Federal income tax under section 501(c)(7) of the Internal Revenue Code (Code). Based on the information submitted, we have concluded that you do not qualify for exemption under that section.

FACTS:

The information submitted discloses that you were created by the execution of Articles of Association. Your purpose, as stated in your articles, is "to encourage parents to participate in club activities and to raise funds to pay for competition expenses, travel expenses of the youngsters, purchase equipment and related expenses thereof . . . ."

Your application, Form 1024, states the Booster Club is made up of parents of gymnastics team members. Membership is required by each family with one or more child competing on the gymnastic team. Parents are required to participate in the various fund raising activities which you have planned. If they do not participate in fund-raising activities, they are billed for the unmet quota. The Booster Club raises funds through membership fees, fund-raising and contributions. To date, the breakdown of income is as follows:

MEMBERS DUES

CONTRIBUTIONS

NONMEMBER SALES

\$

\$

\$

Income from nonmembers equals of the total income of the organization. Major fund-raising includes: parents purchase and use of supermarket and retail store scrip, sale of gift wrap, sale of pizza cookie dough, sale of advertising for team book, rummage sale and sale of . . . . Monthly fees are charged and determined by the child's team level. The money is used to pay for competition entry fees, travel expenses, and all related expenses, and to

Code	Initiator EP/EO:TS:REV:	Reviewer EP/EO:TS:REV	Reviewer EP/EO:TS	Reviewer EP/EO	Reviewer DD	Reviewer EP/EO:TS:REV
Surname						
Date						

purchase equipment and uniforms for the team. The organization had a contract with [REDACTED]. According to a letter dated [REDACTED] and signed by [REDACTED] the organization is currently associated with [REDACTED]. [REDACTED] is not an exempt organization.

ISSUE:

Does the organization qualify for exemption as an organization described in section 501(c)(7) of the Code?

LAW:

Section 501(c)(7) of the Code exempts from Federal income tax clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

Other nonprofitable purposes means purposes similar to pleasure and recreation. See Internal Revenue Publication 557, (10/88) page 32. The prohibition of no part of the net earnings inuring to the benefit of any private shareholder encompasses the activity of providing commercial-type business activities for the convenience of members.

Internal Revenue Regulations (Regs) Section 1.501(c)(7)-1(a) states that in general, exemption from Federal income tax under this section encompasses social and recreational clubs which are supported by membership fees, dues, and assessments.

Reg Section 1.501(c)(7)-1(b) provides, in part, that a club which engages in business, such as making its social and recreational facilities available to the general public, is not organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, and is not exempt from Federal income tax under section 501(c)(7) of the Code.

The rationale in granting tax-exempt status to social clubs is grounded on the premise which enables individuals to pool their resources for the purpose of providing recreation and pleasure more effectively, on a group basis than individually.

In the court case, McGlotten v. Connally, 338 F. Supp. 448, 456 (D.D.C. 1972) the court stated,

"Congress has determined that in a situation where individuals have banded together to provide recreational facilities on a mutual basis, it would be conceptually erroneous to impose a tax on the organization as a separate entity. The funds exempted are received only from the members and any "profit" which results from overcharging for the use of the facilities still belongs to the same members. No income of the sort usually taxed has been generated and the money has simply been shifted from one pocket to another, both within the same pair of pants."

Public Law 94-568, 94th Congress, H.R. 1144, October 1976

provides that a social club is permitted to receive up to 35% of gross receipts, including investment income, from sources outside their members. Within this 35%, not more than 15% of gross receipts can be derived from nonmember use of the club's facilities.

In Manning Association v. Commissioner, 9393 TC, No. 50, CCH Dec. 46,158, Filed Nov. 15, 1989; Calloway Family Association v. Commissioner, 71 TC at 344 and North American Sequential Sweepstakes v. Commissioner, Docket no. 4425.78x, Filed Nov. 3, 1981 TC pg 1087, it was determined by the court that these organizations did not qualify for exemption because they were organized and operated for private benefit.

Revenue Ruling 69-174 describes an organization formed by parents of pupils attending a private school. The organization provided bus transportation to and from school for those children whose parents belonged to the organization. All control over the organization rested in the parents. Parents paid an initial family fee and an additional annual charge for each child. The organization's income approximately equalled the expenses involved in its operations. The organization did not qualify as being exempt because a group of individuals (parents) organized to provide a cooperative service (bus transportation to a private school) for themselves. They were serving private interest rather than a public interest.

#### ANALYSIS AND CONCLUSION:

You are not organized and operated for any of the purposes specified in section 501(c)(7) of the Code. You were formed to raise funds to pay competition entry fees, travel, and related expenses of your own children competing in gymnastics. Your sources of income comes from membership fees and outside fund-raising efforts. Your organization is primarily concerned with raising money to help defray costs associated with your children's gymnastics competitions. There is no element of commingling and/or recreational activity among the parents who make up the membership.

Because social clubs are primarily supported by their members' payments, their tax exemption has the practical effect of allowing the individuals comprising their membership to join together to provide themselves with recreational or social facilities without further tax consequences, when the club's income is limited to membership receipts. Thus, the exemption of social clubs is based on the logic of allowing members to pool their funds for recreational purposes, rather than by any compelling public benefit conferred by social clubs. Parent booster clubs which support their own children attending a for profit gymnastic clubs serves the private interest of the parents as well as the private interest of the for profit gymnastic club. These private interest includes the payment of competition entry fees, travel, lodging, equipment, and uniforms. All of these are expenses which the parent would ordinarily incur.

The activity in connection with for-profit gymnastic clubs cannot be compared to such organizations as little league since the latter can be joined by anyone for nominal fees. Though the booster club may be run separately from the for-profit organization, the

benefit to the for profit organization is substantial. If the team is good, the school's reputation is enhanced. The good will induces more people to enroll their children in the for-profit club.

Although the above Revenue Ruling and court cases address organizations described in section 501(c)(3), the principle is the same for any section of the Code. The activities of your organization are clearly for the benefit of your members and their children.

Accordingly, we hold that you are not an organization operated for any of the purposes specified within section 501(c)(7) of the Code since you are not engaged in recreational activities between the members. Also, ~~100~~% of your income is from sales to nonmembers so the organization does not meet the requirements of Public Law 98-568.

In light of the above, it is the opinion of the Internal Revenue Service that you are not entitled to exemption under Code section 501(c)(7) because you are not organized and operated for social and recreational purposes. There is also substantial private benefit to the parents of the children and the for profit gymnastic club.

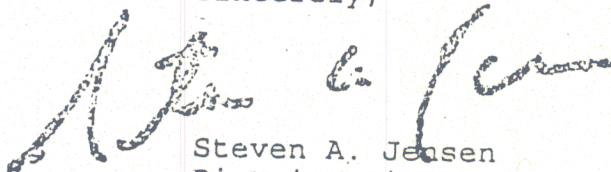
If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018. Please note the instructions for signing on the reverse side of this form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information in support of your position as explained in the enclosed Publication 892. You will be contacted to arrange a date for a hearing. The hearing may be held at the Office of Regional Director of Appeals, or if you request, at a mutually convenient District Office.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will then become the final determination.

If you have any questions, please contact the person whose name appears on the heading of this letter.

Sincerely,



Steven A. Jensen  
District Director

ENCLOSURE:  
Form 6018  
Publication 892