



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201031034**  
Release Date: 8/6/10  
Date: 5/10/10  
UIL: 501.00-00  
501.03-30

Contact Person:  
Identification Number:  
Contact Number:  
Employer Identification Number:  
Form Required To Be Filed:  
1120  
Tax Years:  
All

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, 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 Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date: March 26, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

State:

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.

FACTS:

You are a non-profit corporation organized under the laws of State. You filed a Form 1023 application seeking exemption under section 501(c)(3) of the Code. You additionally requested public charity status under either section 170(b)(1)(a)(iv) or 509(a)(2).

You are a membership organization. Individuals are required to pay a fee to join and must be at least 60 years old. Your services are generally available only to your members, however non-members were permitted to join a trip to \_\_\_\_\_ that you organized (described below). You are governed by a self-selecting Executive Committee of eleven persons.

According to your Articles of Incorporation, your purpose is:

Charitable work in the United States of America to raise funds to provide educational scholarships, family health and welfare assistance to enable students to [a]chieve a college or university education; and, to raise and provide funds to assist in the construction of housing for said students at the college or university, including any purpose permitted to be exempt from taxation under section 501(c) or 501(d) of the United States Internal Revenue Code . . . .

In contrast, your Constitution, which sets forth your purposes, the requirements for membership in your organization, and the leadership structure of your organization, states that your objectives are:

To help increase the awareness of the principles of human beings, [t]o achieve the unity of all seniors, [t]o provide a platform where from to project the voice of seniors Benefit, [t]o promote the feeling of amity and brotherhood among seniors and to promote inter-faith understanding, [t]o help fulfill social, cultural and educational needs of the seniors community and to organize fund raising for seniors activities, [t]o help establish communications between scholars of Seniors philosophy and members of the association, [and t]o celebrate most of the Indian as well as American festivals and holidays as the case may be.

Your description of your past, present and future activities states that you celebrate "all important Indian as well as American festivals," "helped [your] senior members to avail the benefit of Federal programs [such] as Medicare, Social Security, SSI, Medical Prescription Drug etc and the State program[s such] as Medicaid, Food Stamps, Low income housing facilities and other benefits," "arranged a bus trip for Senior Members to visit \_\_\_\_\_ area with a reasonable charge on the basis of No Profit No loss," "arranged an out of country trip to \_\_\_\_\_ in which "39 senior members participated," and are "in final stage to start an educational class[] for seniors who desire to be American Citizens."

Although you stated that you inform members about federal programs and may begin a class on how to become an American Citizen, you have provided no details about these activities. The activities you have described primarily involve holding monthly meetings where you discuss and plan your upcoming celebrations and trips (described below), celebrate the birthdays of members occurring during that month, and hold dinners. You stated that "[d]uring the year 2008 [you] have celebrate[d] all important Indian as well as American festivals [such as] Mother's Day, Father's Day, Independence Day, Christmas, Dipavali, Indian festival (Ras and Garba (Navratri)), Annakut and Parades participation." You plan to continue celebrating such holidays in the future.

You also organize travel tours for your members to various locations, including \_\_\_\_\_ and \_\_\_\_\_. You provide these trips at cost. The itineraries consist of standard sightseeing attractions in various countries, such as Buckingham Palace, the Coliseum, the Eiffel Tower, and the Louvre Museum. You also maintain a regular newsletter to your members, which primarily discusses plans for the holiday celebrations and arrangements for the travel tours.

You have established committees to ensure the "smooth running of the association," pursuant to Article VI of your Constitution. The committees mentioned in your Constitution are a picnic committee, a tour committee, an entertainment committee and a kitchen committee. For the tax year ending December 31, 2008, you allocated 40 percent of your expenses to kitchen supplies, postage, and printing, 56 percent to food, rental of a party hall and rental of a music system, 2 percent to stationery supplies, and 2 percent to expenses associated with the tours. You expect to make similar expenditures in subsequent tax years.

In your application you indicated that your revenues are from donations from your members, but in your monthly newsletters you also mention raising significant amounts of revenue from sales of event tickets, light food, and soft drink and tea tickets.

LAW:

Section 501(c)(3) of the Internal Revenue Code (the "Code") exempts from federal income tax a corporation organized and operated exclusively for charitable, educational, and other purposes, provided that no part of its net earnings inures to the benefit of any private shareholder or individual.

Section 501(c)(7) of the Code provides for exemption from Federal income taxes for social clubs.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") states that to be described in section 501(c)(3) of the Code an organization must be both organized and operated exclusively for purposes specified in the regulations. If an organization fails to meet either test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more 501(c)(3) exempt purposes only if its creating document limits the purposes of such organization to one or more exempt purposes and does not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iv) of the regulations provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the regulations states that an organization will be regarded as operated exclusively for exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Rev. Rul. 69-573, 1969-2 C.B. 125, holds that a college fraternity that maintains a chapter house for active student members is exempt from Federal taxation under section 501(c)(7) of the Code, rather than section 501(c)(3). Therefore, contributions to the fraternity are not deductible under section 170. Although the typical college fraternity does in some degree contribute to the cultural and educational growth of its members during their students' years, that is not its primary purpose. Such an organization is primarily a social club in that its major functions are to provide a meeting place for its members, living quarters, and the headquarters for their entertainment. Rev. Rul. 69-573, citing *Phinney v. Dougherty*, 307 F.2d 357 (5th Cir. 1962); see also *Davidson v. Commissioner*, 60 F.2d 50 (2d Cir. 1932).

Rev. Rul. 72-369, 1972-2 C.B. 245, held that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for exemption under section 501(c)(3) of the Code. Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services were provided at cost and solely for exempt organizations was not sufficient to characterize the

activity as charitable for purposes of section 501(c)(3) of the Code. "Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable."

Rev. Rul. 73-439, 1973-2 C.B. 176 held as non-exempt a discussion group that held closed meetings at which personally oriented speeches were given followed by the serving of food and other refreshments. Each meeting was conducted as to encourage personal contact and fellowship among members. The topic discussed by the faculty guest speakers did not necessarily reflect their particular areas of academic expertise. It was concluded that there was no evidence that the topics discussed fell within any particular field of inquiry nor did the discussions communicate any organized body of knowledge or information that would develop or improve the individual capabilities of the participants to a significant extent or result in any public benefit. The meetings were more akin to the socializing that takes place at meetings of fraternal and professional clubs.

Rev. Rul. 77-366, 1977-2, C.B. 192 provides that a nonprofit organization that arranges and conducts winter-time ocean cruises during which activities to 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.

Rev. Rul. 77-430, 1977-2 C.B. 194 provides exemption under section 501(c)(3) of the Code to an organization that was formed to conduct weekend religious retreats that were open to the public. The retreats were conducted at a rural lakeshore site that offered recreational opportunities for attendees. The Service rules that the use of facilities for recreational purposes was incidental to the organization's religious purpose.

Rev. Proc. 2010-9, 2010-2 I.R.B. 258, provides that exempt status may be granted in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

*Better Business Bureau v. United States*, 326 U.S. 279 (1945), held that the presence of a single nonexempt purpose, because it was substantial in nature, precluded tax exemption under section 501(c)(3) of the Code.

In *Phinney v. Dougherty*, 307 F.2d 357 (5th Cir. 1962), the court of appeals held that a gift to a fund to acquire and maintain a chapter house for a fraternity did not qualify for exemption as a charitable and educational organization within the meaning of section 501(c)(3) of the Code. The court reasoned that, while this activity furthered educational purposes, it also furthered social purposes; thus, the organization did not operate exclusively for section 501(c)(3) purposes, and did not qualify for exemption under section 501(c)(3).

In *St. Louis Science Fiction Limited v. Commissioner*, 49 TCM 1126, 1985-162, the Tax Court held that a science fiction society failed to qualify for tax-exempt status under section 501(c)(3) of the Code. Although many of the organization's functions at its annual conventions (the organization's principal activity) were educational, its overall agenda was not exclusively educational. A substantial portion of convention affairs were social and recreational in nature.

*New Dynamics Foundation v. United States*, 70 Fed.Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court found that the actual purposes displayed in the administrative record supported the conclusion of the IRS. If the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant."

#### RATIONALE:

Your organization is not organized and operated exclusively for charitable, religious, scientific, or other specified exempt purposes as required by section 501(c)(3) of the Code and section 1.501(c)(3)-1(a)(1) of the regulations. Your organization's activities (namely, celebrating holidays and organizing travel) do not accomplish an exempt purpose. Instead, they further non-exempt social and entertainment purposes.

#### Organizational Test

An organization will not be considered exclusively organized for exempt purposes if its articles of incorporation allow the organization to be operated for purposes broader than those specified in section 501(c)(3). Section 1.501(c)(3)-1(b)(1)(iv) of the regulations. Your Articles of Incorporation state that your purpose includes "any purpose permitted to be exempt from taxation under section 501 (c) or 501 (d) of the United States Internal Revenue code, as now or hereafter amended . . . ." This language permits your organization to conduct activities that are not permissible for 501(c)(3) organizations, but may be permissible for organizations exempt from taxation under subsections of 501(c) other than 501(c)(3).

Therefore, you are not organized exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code.

#### Operational Test

Organizations exempt under section 501(c)(3) must be exclusively operated for specific purposes, including charitable, religious, and educational purposes. In addition, section 1.501(c)(3)-1(c)(1) of the regulations states that, in order for an organization to be regarded as operated exclusively for exempt purposes, it must engage primarily in activities that accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. As the court held in *Better Business Bureau v. United States*, *supra*, the presence of a single non-exempt purpose that is substantial in nature will destroy exemption under section 501(c)(3).

### *Recreational Activities*

Your Articles of Incorporation state that you are organized to raise funds “to provide educational scholarships, family health and welfare assistance to enable students to [a]chieve a college or university education; and, to raise and provide funds to assist in the construction of housing for said students at the college or university . . . .” However, none of your operations further these purposes. Instead, you operate as a members-only organization that organizes social activities for your members. Your members are senior citizens and there is no indication that they are using any of your resources in order to obtain a university education. Moreover, none of your expenditures are for scholarships.

Your Constitution states that your objectives are to provide various benefits to senior citizens. Those benefits are, among other things, to “help fulfill social, cultural, and educational needs of the seniors community . . . [and t]o celebrate most of the Indian as well as American festivals and holidays . . . .”

Congress distinguished social clubs from charitable organizations. Social clubs that meet certain requirements may qualify for recognition under section 501(c)(7) of the Code. *Compare* section 501(c)(3), *supra*, with section 501(c)(7), *supra*. According to Rev. Rul. 69-573, *supra*, a club that exists to provide recreational and social activities to its members does not qualify for exemption from Federal taxation under section 501(c)(3) of the Code. Similarly, Rev. Rul. 73-439 provides that an organization that organizes discussion groups and personally oriented speeches followed by the serving of food and other refreshments is operated for social purposes and is not exempt under section 501(c)(3) of the Code. Your activities are similar to the organizations described in these revenue rulings. You organize gatherings of your members around various holidays and your expenditures are directed toward kitchen expenses, party hall rentals, food costs, tour expenses, and stationery. The social nature of your operations is reflected in the committees you established to ensure the “smooth running of the association,” including the picnic committee, the tour committee, the kitchen committee and the entertainment committee. This indicates a focus on social gatherings and the celebration of various holidays. None of these operations are consistent with those of a 501(c)(3) organization. Rather, they indicate that you are primarily engaged in social and recreational activities.

Based on your description of your activities, you are similar to the organization described in *Phinney v. Dougherty*, *supra*, in which the court found that the organization substantially furthered social purposes and therefore did not qualify for exemption under section 501(c)(3) of the Code. In addition, you are like the organization described in *St. Louis Science Fiction Limited v. Commissioner*, *supra*, because your overall agenda is not exclusively charitable, and in fact, all of your activities are social and recreational in nature. Therefore, your activities do not exclusively further any of the religious, charitable, educational or other exempt purposes set forth in section 501(c)(3) of the Code.

### *Travel*

Your organization conducts travel activities, including arranging tours for your members. A cruise travel operator with extensive social and recreational programs did not qualify for

exemption under section 501(c)(3) because such programs serve “substantial independent purposes of a noncharitable nature.” Even though religious and educational activities were available for four hours per day during the cruises, the rest of the time was spent on dining, socializing and sightseeing. The existence of the substantial noncharitable activities (specifically, the activities offered on a usual cruise vacation) precluded exemption. Rev. Rul. 77-366, *supra*. The organization described in Rev. Rul. 77-430, *supra* operated a religious retreat center. The organization allowed participants to use the center’s recreational facilities during their limited amount of free time. The bulk of participants’ time was devoted to scheduled religious and spiritual activities and therefore this organization qualified for exemption under section 501(c)(3).

You arrange group trips for your members to \_\_\_\_\_, and other locations. Your trip itineraries consist of stops at major tourist attractions such as \_\_\_\_\_, the Louvre Museum and the Coliseum. While the trip to \_\_\_\_\_ was organized for the purpose of visiting temples, you did not indicate that this was for religious purposes, rather it appears to be similar to your other sightseeing trips. These trips do not contain any dedicated educational components or other elements that further section 501(c)(3) purposes. Rather, these trips are organized solely for the social and recreational benefit of your members. Like the organization described in Rev. Rul. 77-366, *supra*, you devote a substantial amount of time, energy, and resources to social and recreational activities. In contrast to the organization described in Rev. Rul. 77-430, *supra*, the recreational activities that take place on these trips are not incidental to the primary purpose of the travel. The fact that you operate these trips on a “no profit, no loss” (at cost) basis does not establish that they are in furtherance of one of the specific purposes set out in section 501(c)(3). See, e.g. Rev. Rul. 72-369, *supra*.

Therefore, your social and recreational activities serve substantial non-charitable purposes and do not further any of the exempt purposes set forth in section 501(c)(3) of the Code.

#### *Other Activities*

Exempt status may be granted in advance of an organization’s operations, but its activities must be described in sufficient detail to permit a conclusion that the organization will clearly meet the requirements for exemption. See Rev. Proc. 2010-9, *supra*. If there are gaps in the descriptions of an applicant’s activities, those will be construed against the applicant. See *New Dynamics, supra*.

You stated that you intend to provide assistance to members in applying for aid programs such as Medicare, food stamps, and low-income housing. In addition, you stated that you are planning to begin holding classes in order to explain to your members the process for applying for U.S. citizenship. While it is possible that these activities would further an exempt purpose, you have not conducted them in the past and have provided no details on how or when you intend to conduct them in the future. Therefore, these activities do not establish that you will be operated exclusively for exempt purposes.

In addition, the recreational and travel activities you conduct are a substantial part of your activities and account for all of your current and planned expenditures. Therefore, they would bar exemption even if you did conduct other educational or charitable activities.

**CONCLUSION:**

Based on the information you provided in your application, we conclude that you are not organized or operated exclusively for section 501(c)(3) exempt purposes because your Articles of Incorporation do not limit you to furthering such purposes and your operations consist of non-exempt social and recreational activities.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170 of the Code.

Based on the information you provided, you may qualify for exemption as a social club under section 501(c)(7) of the Code. If you wish to be considered for exemption as a social club, submit Page 1 and Schedule D of the Form 1024 application to the address below. You do not need to pay another user fee.

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.

Your protest statement should be accompanied by the following declaration:

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

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see 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](http://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 protest 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 this address:

Internal Revenue Service  
TE/GE SE:T:EO:RA:T:1

1111 Constitution Ave, N.W.  
Washington, DC 20224

You may also 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,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements