

Internal Revenue Service
Appeals Office
One Cleveland Center-Suite 815
1375 East Ninth Street
Cleveland, OH 44114-1739

Date: April 14, 2008

Number: **201428020**

Release Date: 7/11/2014

A*****
B*****

UIL Code: 501.07-05

CERTIFIED MAIL

Dear :

This is a Final Adverse Determination as to your exempt status under section 501(c)(7) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

Your organization fails to meet the requirement for exemption under IRC section 501(c)(7). IRC section 501(c)(7), as amended by the Tax Reform Act of 1969 provides for the exemption of clubs organized and operated for pleasure, recreation, and other non-profitable 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.

Public Law 94-568 states that it is intended that social clubs should be permitted to receive up to 35 percent of their gross receipts, including investment income, from sources outside of their membership without losing their exempt status. It is also intended that within this 35 percent amount not more than 15 percent of the gross receipts should be derived from the use of a social club's facilities or services by the general public.

As a result of a recent audit of your organization's activities and Forms 990, it was determined that your organization has exceeded the safe harbor limitations on non-member income as outlined in Public Law 94-568.

Department of the Treasury

Person to Contact:

Employee ID Number:

Tel:

Fax:

Contact Hours:

Refer Reply to:

In Re:

Tax Period(s) Ended:

EIN:

C*****

Based on the above, we are revoking your organization's exemption from Federal income tax under section 501(c)(7) of the Internal Revenue Code effective January 1, 20 .

You are required to file Form 1120, U.S. Corporation Income Tax Return. Form 1120 must be filed by the 15th day of the third month after the end of your annual accounting period. A penalty of \$20 a day is charged when a return is filed late, unless there is reasonable cause for the delay. However, the maximum penalty charged cannot exceed \$10,000 or 5 percent of your gross receipts for the year, whichever is less. This penalty may also be charged if a return is not complete, so please be sure your return is complete before you file it.

You have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can call the Taxpayer Advocate for the IRS office that issued this letter. See the enclosed Notice 1214, *Helpful Contacts for Your "Notice of Deficiency"* for Taxpayer Advocate telephone numbers and addresses.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels, gets prompt and proper handling.

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

Sincerely yours,



Charles F. Fisher
Appeals Team Manager

Enclosure:

Notice 1214 Helpful Contacts for your "Notice of Deficiency"

Internal Revenue Service

Department of the Treasury
10 Causeway St. Room 581
Boston, MA 02222

Date: **July 11, 2008**

ORG

Taxpayer Identification Number:

Form:
990 and 990-T

Tax Year(s) Ended:
December 31, XXXX

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your organization's exempt status is necessary.

If you do not agree with our position you may appeal your case. The enclosed Publication 3498, *The Examination Process*, explains how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you. For your convenience, an envelope is enclosed.

If you and Appeals do not agree on some or all of the issues after your Appeals conference, or if you do not request an Appeals conference, you may file suit in United States Tax Court, the United States Court of Federal Claims, or United States District Court, after satisfying procedural and jurisdictional requirements as described in Publication 3498.

You may also request that we refer this matter for technical advice as explained in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*. If a determination letter is issued to you based on technical advice, no further administrative appeal is available to you within the IRS on the issue that was the subject of the technical advice.

If you accept our findings, please sign and return the enclosed Form 6018, *Consent to Proposed Adverse Action*. We will then send you a final letter revoking your exempt status. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and this letter will become final. In that event, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You 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 matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Form 6018
Report of Examination
Envelope

Legend:

D= ORG data

E= Location of ORG

F= Location state of ORG

XX= Year

YY= Amount

ISSUE - REVOCATION OF EXEMPT STATUS

EXPLANATION OF FACTS

The club was organized to unite for civic and education purposes; to encourage closer personal acquaintances; to promote the general welfare of the members; to purchase, lease, hold, sell, develop, mortgage, or dispose of real and personal property, for carrying out the purposes of the corporation; for establishing location for social and recreational meetings; or any other civic or educational program approved by the Board of Directors and voted by the members.

Per bylaws, membership shall be restricted to males of D extraction who are over the age of 20, and have been a resident of E for at least 6 months. There is no mention of a Social Membership. No amendments to the bylaws were provided.

Non members are able to enter the club as there are no security devices such as key cards, buzzers, or warnings that the club is member only. In order to purchase alcohol, the non member is asked to join the club as a Social Member. The non member is issued a Social Member card, good for a year, and at no cost. The individual has no voting rights. Contrary to the by laws, this membership class does not require D extraction or to be a resident of E for six months. The Treasurer of the organization states that the requirement for a Social Membership is to be 21 years of age. This class of membership currently consists of approximately 73% of the membership. The data below clearly shows the trend away from the regular membership.

Social Members in:

Regular Members:

20XX - YY

20XX - YY

20XX - YY

20XX - YY

20XX - YY

20XX - YY

No records concerning host/ guest relationship were kept, per Revenue Procedure 71-17.

LAW

TR. REG. 1.501(C)(7)-1

(a) The exemption provided by section 501(a) for organizations described in section 501(c)(7) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other non profitable purposes, but does not apply to any club if any part of its net earnings inures to the benefit of any private shareholder. In general, this exemption extends to social and recreation clubs which are supported solely by membership fees, dues, and assessments.

However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

- (b) A club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate, timber, or other products, is not organized and operated exclusively for pleasure, recreation, and other non profitable purposes, and is not exempt under section 501(a). Solicitation by advertisement or otherwise for public patronage of its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes. However, an incidental sale of property will not deprive a club of its exemption.

Revenue Ruling 58-588

If a second class of member has the right to use a club facility on the payment of nominal yearly dues plus charges for services utilized, then the club may not be exempt because the club will be engaged in the business of selling services for profit to an unlimited number of individuals.

Revenue Ruling 60-324

...that the instant club by making its social facilities available to the general public through its member-sponsorship arrangement can not be treated as being operated exclusively for pleasure, recreation, or other non profitable purposes.

Revenue Procedure 71-17, 1971-1 C.B. 683

This procedure provides that personal business use of the club facilities by club members furthers a club's social or recreational purposes, even if the employer pays the cost of the use of club facilities. However, the revenue procedure makes it clear that the use must be a member's use and not a device to permit the public, in the form of an employer or fellow employees, to use club facilities.

TAXPAYER'S POSITION

A letter from the organization states that they do not agree with the findings that they should not remain as a non profit organization. The organization's Treasurer, in a written response to this issue stated "The reason we designate a non member as a social member is because the **F** requiring anybody entering a club must have a card to be allowed to be served." The organization also states that the club was organized and its charter established in 19XX as a social non profit organization and its members were non stockholders of the organization and through today the same holds true for the current membership.

GOVERNMENTS POSITION

Based on the facts of the examination and pertaining law, the organization does not satisfy the requirements of section 501(c)(7) of the Internal Revenue Code. The Social Membership class is not a true membership. All membership classes should have eligibility requirements and a formal admittance procedure, even for a nonvoting class. Then a bona fide class of membership would exist. Otherwise, the club provides membership to anyone patronizing the facility. If there are no prerequisite conditions or limitations imposed on members, the organization cannot possess an identity or purpose that would characterize it as a club.

The organization's Treasurer, in a written response to this issue stated "The reason we designate a non member as a social member is because the F requiring anybody entering a club must have a card to be allowed to be served."

This clearly shows that the membership class was created to circumvent State or local liquor laws.

Other factors for the case of revocation are that the membership requirements are not only broad or vaguely stated, the requirements do not exist for this class. The fact that there are no dues charged for this class of membership show that one-time or transient use of the facility by the general public is encouraged.

CONCLUSION

Based on the foregoing reasons, the organization does not qualify for exemption under section 501(c)(7) of the Internal Revenue Code and its tax exempt status should be revoked.

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer		Year/Period Ended Date1
ORG.		

Legend:

ORG= Name of organization

Date1= Date

D= Nationality

E= ORG resident

F= State

XX= Year

Y= Numerical figure

Z= Numerical data

ISSUE

Whether the ORG. should be revoked under section 501(c)(7) of the Internal Revenue Code effective 20XX, for making its social and recreational facilities available to the general public through a "Social Member" arrangement.

ALTERNATIVE ISSUE

Whether the amount of non member income exceeds the limitations (35% and 15%) of PL 94-568. This provides exemption for social clubs organized substantially for pleasure, recreation, and other non profitable purposes. The substantially all test is an income test.

Whether income earned outside of the club's membership and/or not from exempt purpose activities should be included in the computation of unrelated business taxable income.

EXPLANATION OF FACTS

The club was organized to unite for civic and education purposes; to encourage closer personal acquaintances; to promote the general welfare of the members; to purchase, lease, hold, sell, develop, mortgage, or dispose of real and personal property, for carrying out the purposes of the corporation; for establishing location for social and recreational meetings; or any other civic or educational program approved by the Board of Directors and voted by the members.

Per bylaws, membership shall be restricted to males of D extraction who are over the age of Z, and have been a resident of E for at least Y months. There is no mention of a Social Membership. No amendments to the bylaws were provided.

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Social Members in:

Regular Members:

20XX - Z

20XX - Z

20XX - Z

20XX - Z

20XX - Z

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(a) The exemption provided by section 501(a) for organizations described in section 501(c)(7) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other non profitable purposes, but does not apply to any club if any part of its net earnings inures to the benefit of any private shareholder. In general, this exemption extends to social and recreation clubs which are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

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