



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201605021**
Release Date: 1/29/2016
UIL code: 501.07-00
501.07-01
501.07-05

Date: November 6, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:
All

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(7) of the Internal Revenue Code (the Code). 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 federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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 the Notice 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 contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: September 1, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = State

D = Date

F = County

G = Organization

H = Date

UIL:

501.07-00

501.07-01

501.07-05

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(7) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under section 501(c)(7) of the Code? No, for the reasons stated below.

Facts

You were formed as a corporation on B in the state of C. Article Three in your Articles of Incorporation states that you were formed for the following purposes:

- To provide for the social, cultural and civic betterment of its members;
- To participate in, to cooperate with, and to support charitable and civic endeavors in the geographical area if its location;
- To provide for the enjoyment, recreation, leisure and social activities and entertainment of its members; and
- To establish and maintain facilities wherein its members may gather and assemble for such civic, cultural and social purposes.

Although you were formed B, you did not previously apply for exemption and you were subject to auto revocation as of H for failure to file Form 990.

You provide for the enjoyment, recreation, leisure, food, social activities and entertainment of your members as well as non-members. You operate a bar and restaurant that is open Thursday through Saturday evenings. The bar and restaurant facility is leased from two members of your governing body.

Article I, Section I, of your Bylaws states, "Any person over the age of 21 years of good moral character and otherwise acceptable to the membership committee shall be eligible for membership in the Corporation." Article III, Section I, of your bylaws states, "All members of the club shall be entitled to full use of all the club facilities, subject to the rules and regulations promulgated by the Board of Directors."

With the addition of food service on D, members, guests, and non-guests are admitted to the club during operating hours. However, only members and their guests are able to order alcohol as required by G rules and regulations.

You amended Article III, Section I, of your Bylaws on D to change your procedures for use of facilities:

With the addition of food services, members, guest, and non-guest will be allowed admittance to the club during operating hours. Only members and guest will be able to order alcohol as required by G rules and regulations. If a non-member would like to order alcohol, a membership (driver license and age verification) must be acquired before alcohol is served.

Your current procedures for entry into your facility are as follows:

Upon entering the front doors, a hostess is present to seat customers (non-members, members & guest) and members are asked to sign-in. Each customer is asked before seating if an order will be placed at the bar, if yes, then a membership card is asked to be presented. If the customer is not a member, the option to become a member is offered so alcohol may be purchased due to F being a dry county. No customer is served alcohol unless a membership has been obtained and signed in the membership book per the G rules and regulations. Identification (must be 21) and address is required to purchase a membership per the G. If a non-member requests only to eat then no membership is required.

You advertise yourself in print and on the radio as a family friendly restaurant and a bar and grill serving food.

Your sources of revenue include membership dues, charges for acts of entertainment, and charges for food and drink consumption.

Law

Section 501(c)(7) of the Code provides for the exemption from federal income tax of clubs organized 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.

Section 1.501(c)(7)-1(b) of the regulations states that 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.

Rev. Rul. 55-716, 1955-2 C. B. 263, holds that an organization formed for the purpose of furnishing television antenna service to its members is not entitled to exemption from federal income tax under section 501(c)(7) of the Code. The term "club," as used within section 501(c)(7), contemplates the commingling of members, one with the other, in fellowship. Personal contacts and fellowship must play a material part in the life of an organization for it to come within the meaning of the term "club."

Revenue Ruling 58-588, 1958-3 C.B. 265, provides that an organization formed by several individuals to operate a health, recreational, and social club but whose predominant activity is the selling of services for profit to an unlimited number of so-called "members", who have no voice in the management of the club and whose only rights are to the use of the club's facilities upon the payment of specified fees is not a tax-exempt social club within the meaning of section 501(c)(7) of the Internal Revenue Code.

Rev. Rul. 58-589, 1958-2 C.B. 266, discusses the various criteria for recognition of exemption under section 501(c)(7) of the Code. In order to establish that a club is organized and operated for pleasure, recreation, and other non-profitable purposes, "there must be an established membership of individuals, personal contacts and fellowship. A commingling of the members must play a material part in the life of the organization."

Rev. Rul. 69-635, 1969-2 C.B. 126 holds that an automobile club whose principal activity is rendering automobile services to its members but has no significant social activities, does not qualify for exemption under section 501(c)(7) of the Code. The basis for this conclusion is the fact the club had no significant commingling of its members.

In Chattanooga Automobile Club v. Commissioner, Warren Automobile Club, Inc. v. Commissioner, 182 F. 2d 551 (6th Cir. 1950), the United States Court of Appeals 6th Circuit held that to be exempt under the Act of Congress, a club must have been organized and operated exclusively for pleasure, recreation, and other non-profitable purposes. The court further specified that the words "other non-profitable purposes" must be construed as coming within the same classification as pleasure and recreation. In addition, there must be at least some sort of commingling of members to constitute a club. The court held that the two automobile clubs petitioning the court were not exempt under section 101(9) of the Internal Revenue Code of 1939 as a social club because the members of these clubs did not commingle.

In Keystone Automobile Club v. Commissioner, 181 F. 2d 402 (3rd Cir. 1950), the United States Court of Appeals 3rd Circuit defined the word "club" to include some type of mingling of people together as well as a common object. In this case, the court held that the Keystone Automobile Club was not exempt under section 101(9) of the Code for a number of reasons one of which was because they saw no evidence of the commingling of members.

In United States v. Fort Worth Club of Fort Worth, Texas, 345 F.2d 52, 57 (5th Cir. 1965), the court declared for a social club to qualify for exemption under section 501(c)(7), its outside profits must be (1) strictly incidental to club activities, not a result of an outside business, and (2) either negligible or nonrecurring.

Application of law

Not organized for pleasure, recreation or other non-profit purpose

You are not described under section 501(c)(7) of the Code because you are not organized for pleasure, recreation, or other non-profitable purpose. You were formed to provide for the enjoyment, recreation, leisure, food, social activities and entertainment of your members as well as non-members. Your activity consists of operating a bar and restaurant. Your restaurant is open to anyone. Although you only sell alcohol to members, anyone over the age of 21 can obtain membership in order to purchase alcohol. Your sales of food and alcohol demonstrate that you are not operated for the purposes declared under section 501(c)(7) of the Code. Rather, you were formed primarily for commercial purposes.

Transacting business with the general public

Per section 1.501(c)(7)-1(b) of the regulations you are not organized and operated for pleasure, recreation, and other non-profitable purposes because you engage in the business of operating a bar and restaurant and you make your facilities available to the general public. You advertise yourself in print and on the radio as a family friendly restaurant and a bar and grill serving food. This advertising for public patronage is evidence that you are conducting a business. Since your primary purpose is to sell food to all members of the public and to sell alcohol to the general public through your issuance of unlimited memberships, you do not qualify for exemption under section 501(c)(7) of the Code.

Per United States v. Fort Worth Club of Fort Worth, Texas, you do not qualify for exemption under section 501(c)(7) of the Code because your outside profits are not strictly incidental to your club activities and they are not negligible or nonrecurring. You have no club activities other than the sale of food and alcohol. This activity is not incidental and is not negligible. This is a recurring activity that takes place every week from Thursday – Saturday. You are therefore engaged in a business activity with the general public.

Lack of membership requirements

Similar to the organization described in Rev. Rul. 58-588, you provide an unlimited amount of memberships demonstrated by the fact that anyone can become a member by eating at your restaurant and obtaining a membership to buy alcohol from you as long as they are 21 and provide identification and an address. The sole reason for your membership is so that patrons of your restaurant can purchase alcohol because F is a dry county. In following the G rules and regulations, no customer is served alcohol unless a membership has been obtained and the membership book has been signed. Income from your “members” is therefore considered income from the general public.

Lack of social activities or commingling among your members

To be operated for the purposes described in section 501(c)(7) of the Code, an organization must have an established membership of individuals who meet to make personal contacts and promote fellowship. The commingling of the members must play a material part in the life of a tax exempt social club. Like the organization in Rev. Rul. 55-716, you are simply furnishing a service to members by selling alcohol. Your only activity consists of operating a bar and restaurant and selling food and alcohol to the public. Anyone from the public can eat in the restaurant and anyone can purchase alcohol as long as they become a member. The sole purpose of your membership is to allow individuals to purchase alcohol. You have no member events and there

is no commingling among members. In addition, per Rev. Rul. 58-589, you do not qualify for exemption under section 501(c)(7) of the Code because there is no fellowship or commingling among your members. Members simply come to your restaurant and bar to eat and drink, along with the general public.

Chattanooga Automobile Club v. Commissioner, Warren Automobile Club, Inc. v. Commissioner, and Keystone Automobile Club v. Commissioner both show that organizations failing to meet the commingling requirement will be denied exemption. You have not demonstrated that members have any interaction other than being at the same location for the serving of food or beverage. Anyone over the age of 21 with identification can become a member. There is no common interest among your members and your social activities are only incidental. Because you have demonstrated very little if any personal contact among members and there is no expectation of personal contact among members, commingling is not a material part of your activities. Like the organization described in Rev. Rul. 69-635, you are primarily providing services with insignificant or no commingling. By operating in such a way, you do not qualify for exemption under section 501(c)(7) of the Code.

Conclusion

Based on the information provided, we conclude that you are not organized for pleasure, recreation or other nonprofitable purposes as described in section 501(c)(7) of the Internal Revenue Code. You are organized for the purpose of operating a restaurant and bar for the general public and you advertise your facilities to the general public. The purpose of your membership is to meet the G rules and regulations in order to serve alcohol. You do not meet the membership and commingling requirements for organizations qualifying for exemption from federal income tax under section 501(c)(7) of the Code. Accordingly, you do not qualify for recognition of exemption under section 501(c)(7) of the Internal Revenue Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:
Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts 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 he or she hasn'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 provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

Where to send your protest

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

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement 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 he or she received it.

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.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892