



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201615019**
Release Date: 4/8/2016
UIL Code: 501.07-00
501.07-01
501.07-05

Date: January 13, 2016

Employer ID number:

Contact person/ID number:
Customer Service
Contact telephone number:

Form you must file:

Tax years:

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 22, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

- B= Brand
- C= Group
- D= Manufacturer
- E= City & State
- F= Date
- G= State
- Y= Company
- Z= Dealership

UIL:

- 501.7-00
- 501.7-01
- 501.7-05

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 tax exemption under section 501(c)(7)? No, for the reasons stated below.

Facts

You were incorporated on F in the state of G. You are a chapter of C, which is sponsored by Z. You spend 75% of your time on social activities including member motorcycle rides as well as other social gatherings. Z provides you with space for chapter socials and activities including a monthly fundraising event where you sell food to Z's customers in exchange for a donation. The percentage of your annual gross income derived from nonmembers at your monthly fundraising events is detailed in the table below:

Year	2010	2011	2012	2013
Percentage of gross income derived from nonmembers	87%	87%	78%	67%

Your Articles of Incorporation state that you are organized for charitable, benevolent, social, educational and fraternal purposes.

Your Bylaws include the following purpose and declaration clause:

The specific purpose of which the Corporation shall conduct business shall be that of a C Chapter pursuant to an annual renewable license with C. Chapter business operations shall be conducted in such a manner as to comply with the requirements of the Annual Charter for C Chapters and with all rules, regulations and policies published from time to time by C. These Bylaws shall not replace, supersede or conflict with the Annual Charter for C Chapters or C Policies.

Your Chapter Charter Agreement (Charter) with Z states that you were established to “with like-minded people who have a passion for riding D and the Y brand. According to your charter, you exist to develop a closer relationship between the D rider and Z. All of your chapter activities must be approved by Z and the Z manager.

Your Bylaws state that your board of directors consists of Z, and four primary officers: Z, Z Manager, Director, Assistant Director, Treasurer, and Secretary. The Z manager is an employee of Z that works with your officers to ensure that the chapter is not causing damage to Z’s reputation and coordinates Z’s activities requiring chapter participation. Your Bylaws further stipulate that your four primary officers will be nominated and elected by your membership at an election meeting, however, your Charter provides that Z may remove any officer from office at Z’s sole discretion.

Your Charter provides Z with the authority to: determine how chapter officers are selected and their terms of service; remove any officer from office at Z’s sole discretion; require the chapter to perform to D’s standards and vision; to terminate any member if Z determines that a member’s conduct is undesirable or contrary to Z’s standards or vision. Further, your Charter stipulates that if C determines at its sole discretion that you are not adhering to the terms of the charter, C may terminate the chapter as a B affiliated organization.

Your Charter states that your affiliation with B is based on a co-signed “Local Chapter Operators Agreement” (Agreement), between Z and Y. This agreement provides Z with a limited license to certain trademarks to operate a local chapter. The trademarks are listed in the chapter charter and are to be used on chapter communications, web, and signage. All chapter communications must be approved by Z and the Z manager.

Your membership is limited to individuals who meet the following requirements:

- Members in good standing with National C
- Individuals who complete a chapter registration/release form
- Individuals that provide payment by either cash or check for annual dues of :

Your membership application form is produced by National C and is the only form that you are permitted to use.

National C has two forms of membership. The requirements to meet each type of membership classification are outlined below:

1. Full members – Individuals must OWN and provide the Vehicle Identification Number for the D they own, complete a membership application (paper or online), and provide payment of annual dues of \$ to the C located in E.
2. Associate member – Individual must be sponsored by a full member (usually spouse or partner), complete a membership application (paper or online), and provide payment of annual dues of \$ to the C located in E.

Your gross income is derived primarily from donations from the general public. Your primary expenses are attributable to activities related to your exempt purposes. Approximately 2% - 16% of your annual gross revenues are donated to charitable entities each year.

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(a) of the Regulations states that the exemption provided by section 501(a) of the Code for an organization described in section 501(c)(7) of the Code 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 inure 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.

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) of the Code. 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. As previously noted, section 501(c)(7) of the Code requires that substantially all of a social club's activities be social or recreational activities for members.

Public Law 94-568, 1976-2 C.B. 596, provides that a social club may receive up to 35 percent of its gross receipts, including investment income from sources outside its membership, without losing exemption. 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. This means that an exempt social club may receive up to 35 percent of its gross receipts from a combination of investment income and receipts from nonmembers so long as the latter do not represent more than 15 percent of the total receipts.

Revenue Ruling 58-589, 1958-2 C.B. 266, 1958 sets forth criteria or tests for determining whether an organization qualifies for exemption from Federal income tax under section 501(c)(7) of the Code. The ruling states that "...a club that makes its facilities open to the general public and the purpose is to increase its funds for enlarging its club facilities or for otherwise benefitting its members, it is evident that it is not operating as an exempt social club within the intendment of section 501(c)(7) of the Code."

Revenue Ruling 60-324, 1960-2 CB 173 held that a social club that made its social facilities available to the general public through its member-sponsorship arrangement cannot be treated as being operated exclusively for pleasure, recreation, or other nonprofitable purposes and no longer qualified for tax exemption under section 501(c)(7) of the Code.

Revenue Ruling 66-149, 1966-1 CB 146 held that a social club was not exempt from federal income tax as an organization described in section 501(c)(7) of the Code because it regularly derived a substantial part of its income from nonmember sources such as, for example, dividends and interest on investments.

Revenue Ruling 66-225, 1966-2 C.B. 227 held that a nonprofit organization which provides entertainment for its members does not qualify for exemption under section 501(c)(7) because it was controlled by a taxable corporation and operated as an integral part of such corporation's business.

Revenue Ruling 66-360, 1966-2 CB 228 held that a national sorority and its chapters did not qualify for tax exemption under section 501(c)(7) of the Code because they were created and controlled by a business corporation which furnished services and supplies to the sorority and its member chapters.

Application of law

You are not operated substantially for pleasure, recreation and other nonprofitable purposes within the meaning of section 501(c)(7) of the Code because you are controlled by and operate to serve the financial interests of Z, A, and Y.

You are not described in sections 1.501(c)(7)-1(a) and 1.501(c)(7)-1(b) of the Regulations because you are controlled by and promote the private interests of Z, C, and Y, and substantially all of your income is derived from donations from Z's customers.

You do not meet the nonmember income limitations proscribed by Public Law 94-568, 1976-2 C.B. 596 because your income from nonmembers constitutes 67% - 87% of your total gross income annually. Senate Report 94-1318 Sept. 28, 1976, states that if an organization has outside income in excess of the 35% limit (or 15-percent in the case of gross receipts derived from nonmember use of a club's facilities), all the facts and circumstances are to be taken into account in determining whether the organization qualifies for exempt status. As a result, we considered the following factors:

- Your actual percentage of nonmember receipts comprises 67% - 87% of your total gross income
- Your fundraising events are held regularly (once a month)
- The purpose of your fundraising events is to raise money for your club
- Your fundraising events result in net profits to your club

Ultimately, we determined that you are funded substantially by donations from Z's customers, your fundraising events are held on a regular and recurring basis, the purpose of your fundraising events is to raise money for

your club, and your fundraising events result in a net profit to your club. Based on these factors, we determined that you do not satisfy the requirements outlined in Public Law 94-568, 1976-2 C.B. 596 and therefore do not qualify for tax exemption under section 501(c)(7) of the Code.

You do not meet the criteria set forth by Revenue Ruling 58-589, 1958-2 C.B. 266, 1958, because your largest source of annual income is derived from the solicitation of donations from Z's customers. Such fundraising solicitations are not incidental, trivial, or nonrecurrent and they result in reduced costs for your members. As a result, tax exemption under section 501(c)(7) is precluded.

You are similar to the organization described in Revenue Ruling 60-324, 1960-2 CB 173 because you derive between 67% and 87% of your gross income from donations from Z's customers. Like the organization described in the ruling, your transactions with the general public are not incidental and are not in furtherance of general club purposes. As a result, you do not satisfy the requirements for recognition of tax exemption under section 501(c)(7) of the Code.

Like the organization described in Revenue Ruling 66-149, 1966-1 CB 146, you are not described in section 501(c)(7) of the Code because you regularly derive income from nonmember sources; nonmember income is received with the motive of generating revenue to support the operations of your club; and your nonmember income is substantial in relation to your other income.

You are similar to the organization described in Revenue Ruling 66-225, 1966-2 C.B. 227 because you were founded by Z to create a closer relationship between Z and Z's riders. Z's control over you is illustrated by the fact that Z has sole discretion to modify your board, to terminate your members, and to rescind your Chapter Charter Agreement. All of your activities and communications have to be approved by Z. Further, as a requirement to membership, an individual must own or be sponsored by someone who owns a D. Like the organization described in Revenue Ruling 66-225, 1966-2 C.B. 227, you are controlled by and operated to serve the private interests of Z, a taxable corporation. As a result, you are not organized and operated exclusively for pleasure, recreation and other nonprofitable purposes within the meaning of section 501(c)(7) of the Code.

You bear strong similarities to the organization described in Revenue Ruling 66-360, 1966-2 CB 228. Like the national sorority and its chapters described in the ruling, you were founded by a for-profit entity and the for-profit entity exerts complete control over you. This authority is illustrated by the fact that Z can appoint and remove your officers, terminate sponsorship over your club, terminate membership, establish chapter dues, control the content of club communications, etc... Your very existence is subject to the discretion of Z, C and Y. If Z determines that your activities or the activities of one of your members are undesirable or contrary to Z's vision and standards, Z has the power to terminate the chapter or the membership of an individual within the chapter. Like the organization described in Revenue Ruling 66-360, 1966-2 CB 228, you are operated to serve the financial interests of Z, Y, C, and the B brand. Accordingly, you are not organized for pleasure, recreation, and other nonprofitable purposes within the meaning of section 501(c)(7) of the Code.

Your position

You assert that you qualify for tax exemption under section 501(c)(7) of the Code for the following reasons:

- a. You are funded primarily through donations from the general public. You state that your members prepare food items which are made available to the public in exchange for a donation at monthly

fundraising events held at Z. The money received is used by the club for maintenance, morale, and charitable donations.

- b. Your charter provides that National C has full control over each C chapter. The C charter, however, does not provide a true depiction of your day to day operations. Your four primary officers (director, assistant director, secretary, and treasurer) as well as discretionary officers, provide the primary governance to your chapter.
- c. You are organized under the same basic charter and operate in a similar manner to many C chapters that the Service has recognized as tax exempt under section 501(c)(7) of the Code.

Our response to your position

You present three main arguments to substantiate your claim for recognition of tax exemption under section 501(c)(7) of the Code. We hold that none of your arguments demonstrate that you meet the requirements outlined in section 501(c)(7) of the Code.

1. You claim that since you are primarily funded through the receipt of donations from the general public and those donations are used to cover your maintenance costs, morale and charitable donations, you should meet the requirements for tax exemption under section 501(c)(7) of the Code. We disagree. The fact that the food items used in your fundraising program are donated by members and the fact that between 2%-16% of your revenues are donated annually to charitable entities does not change the fact that you do not satisfy the nonmember income requirements outlined in Public Law 94-568, 1976-2 C.B. 596.
2. You do not dispute the fact that your charter provides Z with full control over your chapter. Rather, you contend that despite the fact that your charter places control in the hands of Z, this is not a true depiction of your day to day operations. We disagree. The fact that your day to day operations may be conducted without much interaction or direction from Z, does not change the fact that Z, at their sole discretion, can terminate your members and the chapter as a B affiliated organization. It is irrelevant whether Z is actively exercising their control over you on a day to day basis. The only relevant factor is that you are controlled by and operated to serve the private interests of Z, a taxable corporation. As a result, you do not meet the requirements for tax exemption under section 501(c)(7).
3. You assert that other C chapters which operate in a manner similar to you are tax exempt under section 501(c)(7) of the Code. We are unable to comment on the tax exempt status of other organizations. This letter addresses only the facts and circumstances relating to your application form 1024.

Conclusion

We are unable to conclude that you are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes because you are funded primarily through donations from nonmembers and you serve the private interests of Z, C, and Y. The facts clearly demonstrate that you are not operated as a social club within the meaning of section 501(c)(7) of the Code.

Accordingly, recognition of tax exemption under section 501(c)(7) is precluded.

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