

Internal Revenue Service

Appeals Office
4330 Watt Avenue SA 7890
Sacramento, CA 95821-7012

Department of the Treasury

Employer Identification Number:

Date:

AUG - 3 2016

Person to Contact:

Number: 201644021

Release Date: 10/28/2016

Employee ID Number:

Tel:

Fax:

UIL: 501.07-00

Certified Mail

Dear :

We considered your appeal of the adverse action proposed by the Director, Exempt Organizations, Rulings and Agreements. This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in section 501(c)(7) of the Code.

Our adverse determination was made for the following reasons:

Organizations exempt from tax under section 501(c)(7) of the Internal Revenue Code must be clubs 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. Your organization does not operate for pleasure, recreation, and other non-profitable purposes and promote commingling of your members with personal contacts and fellowship as a material part of your organization and its membership of individuals. Therefore, you are not an organization described in Code section 501(c)(7).

You are required to file Federal income tax returns on Forms 1120. File your returns with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, N.W.
Washington, D.C. 20217

U.S. Court of Federal Claims
717 Madison Place, N.W.
Washington, D.C. 20439

U.S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, D.C. 20001

Processing of income tax returns and assessments of any taxes due will not be delayed if you file a petition for declaratory judgment under section 7428 of the Internal Revenue Code.

You may also be eligible for help from the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 1-877-777-4778.

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.

Sincerely Yours,

Appeals Team Manager

Enclosure: Publication 892



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

Date: JAN 21 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

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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

Are you organized and operated for pleasure, recreation, and other non-profitable purposes as defined in section 501(c)(7) of the Code? No, for the reasons given below.

Facts

You were formed as a nonprofit corporation with members on P in the state of Q. You were previously granted tax exemption under Section 501(c)(7) of the Code. Your exemption was automatically revoked on May 15,

20XX for failure to file Form 990, Form 990EZ or 990N for three consecutive years. Accordingly, you submitted the Form 1024, application for exemption.

Your Articles of Incorporation state your primary purpose is to construct, own, maintain and operate a swim club and other community recreational facilities. According to your Form 1024, you have been inactive since S because your swimming pool had to be closed due to soil subsidence and ground movement causing the pool walls to crack and disintegrate. At a general meeting in S, your members voted to close the doors to all swimming activities. You sold the property in T which was over a decade later.

Your activities between S and T primarily consisted of maintaining the grounds and a large recreational hall, which had a pool table, card tables, a sink, stove, refrigerator and restrooms. Annual work parties comprised of active members organized to do repair and maintenance such as pulling weeds, needed painting and generally kept up your property in a presentable condition. You explained these work parties resulted in bringing the members together for social gatherings using the club premises. Your members also held special events for birthdays and weddings. Moreover, your recreation hall was used once by the local county as an election polling place for one year after the pool was closed. Your recreation hall was also used by a local high school for graduation night workshops.

No dues or revenues were collected after S. About seven years after the pool closed, you began searching for members who may own a share in your assets. An attorney advised you to mail a letter to the last known address of all resigned members. All members replying to the request for membership status were required to pay current any unpaid past dues from the last dues they had paid to year S. These amounts would be adjusted to the individual equity share upon dissolution and disbursement of any remaining funds you may have. You eventually found c members. These members met at the end of U and decided to dispose of the property.

Expenses between S and T (k years) consisted of the following:

Property taxes:	d dollars
Fire/Liability Insurance premiums:	e dollars
Tree removal costs:	f dollars
<u>Administrative expenses:</u>	<u>g dollars</u>
Subtotal:	h dollars

In addition, there were various miscellaneous service expenses including computer, secretarial, property maintenance and administrative fees for k years and totaled j dollars.

The portion of these expenses requiring contemporary disbursement of cash was funded by members who made advances to you totaling m dollars. Of this, your treasurer and your president who are husband and wife paid about n dollars.

Basis in this property (land, building and improvements) was approximately o dollars. The sale resulted in an approximate gain of p dollars before taking into account all the carrying costs of the property for the years S to T. These carrying costs include property taxes, fire and liability insurance, maintenance, administrative and other expenses totaling q dollars spread over k years. The loans were repaid from these proceeds.

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.

Treasury Regulation 1.501(c)(7)-1 provides as follows:

(a) The exemption provided by 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 a 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) [26 USCS § 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 58-589, 1958-2 C.B. 266, sets forth the criteria for determining whether an organization qualifies for tax-exempt status per Internal Revenue Code section 501(c)(7). The ruling provides that a commingling of the members must play a material part in the life of the organization as indicated by an established membership of individuals, personal contacts and fellowship.

Revenue Ruling 69-232, 1991-1 C.B. 154, held that an organization is exempt under section 501(c)(7) of the Internal Revenue Code where the organization sold the property to land developers at a profit. The club then used the proceeds to purchase land and build a more modern clubhouse and golf course farther out in the country.

Revenue Ruling 69-635, 1969-2, C.B. 126, in situation 3 held that an organization was not exempt under section 501(c)(7) of the Internal Revenue Code because the organization was designed to provide services to its members and there was no significant commingling of members.

Application of law

You do not meet Section 501(c)(7) of the Code and 1.501(c)(7)-1(a) of the Regulations because you have not shown that you are both organized and operated substantially for pleasure, recreation or other non-profitable purposes. You have not conducted substantial social and recreational activities since S, over a decade ago when your membership voted to close the pool; in addition, you have not had an active membership and have collected no dues past S nor had any other sources of revenue. Your annual work parties with b members held to conduct physical property maintenance does not constitute social or recreational activities.

Similar to Revenue Rulings 58-589 and 69-635, you do not qualify under 501(c)(7) as you have provided no evidence of regular commingling of members. You have not had an established membership of individuals since S. You only located former inactive members after an attorney advised you to for dissolution purposes. Your only gatherings have consisted of work parties of b members who met annually to clean up your property .

You are not similar to the organization described in the Revenue Ruling 69-232 because while you did sell the property, it was your intent to dissolve and distribute the net proceeds to your inactive members; you did not buy and relocate your facility to continue your activities.

Conclusion

You are not organized and operated for pleasure, recreation, and other non-profitable purposes as defined in section 501(c)(7) of the Code. Further, your have had no regular activities and are not organized and operated substantially for pleasure, recreation and other non-profitable purpose. For these reasons you do not qualify under Section 501(c)(7) of the 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*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

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