



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1100 Commerce Street, MC 4920
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: 201844010
Release Date: 11/2/2018
UIL Code: 501.03-00

Date: MAY 03 2018

Taxpayer Identification Number:

Tax Period Ended:

Person to Contact:

Identification Number:

Contact Information:

Telephone:

Fax:

CERTIFIED MAIL – Return Receipt Requested

Dear

This is a 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 Code section 501(c)(7) for the tax period(s) above.

Your exempt status is hereby-revoked effective January 1, 20

Our adverse determination as to your exempt status was made for the following reason(s):

You have not demonstrated that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code § 501(c)(7) and Treasury Regulations 1.501(c)(7)-1. Exempt clubs are organized for pleasure, recreation, and other non-profitable purposes. The exemption extends to social and recreation clubs that are supported solely by membership fees, dues, and assessments. Your activities are not in furtherance or operated exclusively for pleasure, recreation or other similar nonprofit purposes and are not exempt under section 501(a).

Organizations that are not exempt under section 501 generally are required to file federal income tax returns and pay tax, where applicable. For further instructions, forms, and information please visit www.irs.gov.

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.

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We 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 our assistance, which is always free, we will do everything possible to help you. Visit taxpayeradvocate.irs.gov or call 1-877-777-4778.

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

Sincerely yours,



Maria D. Hooke
Director, EO Examinations

Enclosure: Publication 892



Department of the Treasury
Internal Revenue Service
**Tax Exempt and Government Entities
Exempt Organizations Examinations**
1100 Commerce Street, MS 4900 DAL
Dallas, TX 75242

Date:
January 5, 2018
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact / ID Number:

Employee ID:
Contact numbers:
Telephone:
Fax:
Manager's Name / ID Number:

Employee ID:
Manager's Contact Number:

Response Due Date:

Certified Mail - Return Receipt Requested

Dear :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(7) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(7).

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also

may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't 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:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

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,

Maria Hooke
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer		

ISSUE:

Whether () qualifies for exemption under Internal Revenue Code (IRC) §501(c)(7) due to exceeding the 15% non-member use of the facilities and services.

FACTS:

The was incorporated on July 7, 19XX in the State of .

operates an 0-hole golf course, a swimming pool, bar, and pro shop which are open to members. The income received by includes membership dues, greens fees, cart rentals, bar sales, pro shop sales, and gaming income. The members pay monthly dues. The pool is available to the general public for rent during off hours as well as the hall.

filed the State of Quarterly Report for the year ending December 31, 20XX reporting total income from gaming activities with non-members on Line 8 reporting the following.

- 1ST Quarter as \$ 0.
- 2ND Quarter as \$ 0.
- 3RD Quarter as \$ 0.
- 4TH Quarter as \$ 0.
- Total Income of \$ 0.

reported gross income on the Form 990 for the December 31, 20XX as \$ 0 reported on Page 9 Part VIII Statement of Revenue as but actual total income was \$ 0:

Part VIII Statement of Revenue		Column A	Column B	Column C	Column D
Line #	Description	Total Revenue	Related Revenue	Unrelated Revenue	Revenue excluded under 512-514
1b.	Membership Dues & Assess	\$ 0			
1f.	All other contributions	\$ 0			
1h.	Total	\$ 0			
2a.	Program Service Revenue	\$ 0	\$ 0		
8a.	Fundraising	\$ 0			
9a.	Gross income from gaming	\$ 0		\$ 0	
11a.	Insurance Proceeds	\$ 0			\$ 0
12.	Total Income	\$ 0	\$ 0	\$ 0	\$ 0

Note: Total revenue is Less direct expenses of gaming income as reported on line 9b of

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		

\$ 0 and less the difference of \$ 0 reported to the State of _____ and Line 9a.

Form 990-T was viewed but not audited for the year ending December 31, 20XX. reported Unrelated Trade or Business Income on the Form 990-T as \$ 0 reported on Page 1 Part I as:

Part 1 Unrelated Trade or Business Income		Column A	Column B	Column C
Line #	Description	Income	Expenses	Net
1c.	Gross receipts or sales balance	\$ 0		
2.	Cost of Goods Sold			
3.	Gross profit	\$ 0		\$ 0
13.	Total (lines 3 through 12)	\$ 0		\$ 0

revenue attributable to non-members is \$ 0 or 0 % of total revenue received for the year. Non-member revenue doesn't include the fundraising income that wasn't reported on the Form 990-T.

filed the State of _____ Report for the year ending December 31, 20XX reporting total income from gaming activities with non-members on Line 8 reporting the following.

- 1ST Quarter as \$ 0.
- 2ND Quarter as \$ 0.
- 3RD Quarter as \$ 0.
- 4TH Quarter as \$ 0.
- Total Income of \$ 0.

reported gross income on the Form 990 for the December 31, 20XX as \$ 0 reported on Page 9 Part VIII Statement of Revenue as but actual revenue was \$ 0:

Part VIII Statement of Revenue		Column A	Column B	Column C	Column D
Line #	Description	Total Revenue	Related Revenue	Unrelated Revenue	Revenue excluded under 512-514
1b.	Membership Dues & Assess	\$ 0			
1f.	All other contributions	\$ 0			
1h.	Total	\$ 0			
2a.	Program Service Revenue	\$ 0	\$ 0		
8a.	Fundraising	\$ 0			

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Explanation of Items		
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9a.	Gross income from gaming	\$ 0		\$ 0	
12.	Total Income	\$ 0	\$ 0	\$ 0	

Note: Total revenue is Less direct expenses of gaming income as reported on line 9b of \$ 0 and less the difference of \$ 0 reported to the State of _____ and Line 9a.

Form 990-T was viewed but not audited for the year ending December 31, 20XX. reported Unrelated Trade or Business Income on the Form 990-T as \$ 0 reported on Page 1 Part I as:

Part 1 Unrelated Trade or Business Income		Column A	Column B	Column C
Line #	Description	Income	Expenses	Net
1c.	Gross receipts or sales balance	\$ 0		
2.	Cost of Goods Sold			
3.	Gross profit	\$ 0		\$ 0
13.	Total (lines 3 through 12)	\$ 0		\$ 0

revenue attributable to non-members is \$ 0 or 0 % of total revenue received for the year. Non-member revenue doesn't include the fundraising income that wasn't reported on the Form 990-T.

Year	Gross Income	Gross Member Income	Gross Non-member Income	% of Member Income	% of Non-member Income
20XX	\$0	\$0	\$0	0.000%	0.000%
20XX	\$0	\$0	\$0	0.000%	0.000%

LAW:

Internal Revenue Code

IRC §501(c)(7) provides exemption from income taxes for 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.

Prior to its amendment in 1976, IRC §501(c)(7) required that social clubs be operated exclusively for pleasure, recreation and other non-profitable purposes. Public Law 94-568 amended the "exclusive" provision to read "substantially" in order to allow an IRC §501(c)(7) organization to receive up to 35 percent of its gross receipts, including investment income, from sources outside

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its membership without losing its tax-exempt status. The Committee Reports for Public Law 94-568 (Senate Report No. 94-1318 2d Session, 1976-2 C.B. 597) further states;

- (a) Within the 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 non-members, so long as the latter do not represent more than 15 percent of total receipts.
- (b) Thus, a social club may receive investment income up to the full 35 percent of its gross receipts if no income is derived from non-members' use of club facilities.
- (c) In addition, the Committee Report states that where a club receives unusual amounts of income, such as from the sale of its clubhouse or similar facilities, that income is not to be included in the 35 percent formula.

Treasury Regulations

Treas. Reg. §1.501(c)(7)-1(a) further provides that 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.

A social club that opens its facilities to the public is deemed to be not organized and operated exclusively* for pleasure, recreation, and other nonprofitable purposes, and is not exempt under §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. [Reg. §1.501(c)(7)-1(b)]

[*Treas. Reg. §1.501(c)(7)-1 has not been updated to reflect P.L. 94-568 which changed "exclusively" to "substantially all".]

Revenue Rulings

Rev. Rul. 58-589, 1958-2CB 266 examines the criteria for determining whether an organization qualifies for exemption under IRC §501(a) as an organization described in IRC §501(c)(7) of the Code. This ruling states it is clear under the foregoing regulations 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, etc., may not be considered as being organized and operated exclusively for pleasure, recreation or social purposes. It is equally clear that the solicitation by advertisements

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or otherwise of public patronage of its facilities may be adverse to the establishment of an exempt status.

Revenue Ruling 66-149 holds a social club as not exempt as an organization described in IRC §501(c)(7) where it derives a substantial part of its income from non-member sources.

Revenue Ruling 60-324 states by making its social facilities available to the general public the club cannot be treated as being operated exclusively for pleasure, recreation or other non-profitable purposes.

Revenue Procedures

Rev. Proc. 71-17, 1971 WL 26186, 1971-1 C.B. 683 sets forth guidelines for determining the effect gross receipts derived from use of a social club's facilities by the general public have on the club's exemption from federal income tax under IRC §501(c)(7) of the Code.

The club must maintain books and records of each such use and the amount derived therefrom. This requirement applies even though the member pays initially for such use. In each instance, the record must contain the following information:

1. The date;
2. The total number in the party;
3. The number of nonmembers in the party;
4. The total charges;
5. The charges attributable to nonmembers;
6. The charges paid by nonmembers;
7. Where a member pays all or part of the charges attributable to nonmembers, a statement signed by the member indicating whether he has been or will be reimbursed for such nonmember use and, if so, the amount of the reimbursement;
8. Where the member's employer reimburses the member, or makes direct payment to the club for the charges attributable to nonmembers, a statement signed by the member indicating the name of his employer; the amount of the payment attributable to the nonmember use; the nonmember's name and business or other relationship to the member; and the business, personal, or social purpose of the member served by the nonmember use.
9. Where a nonmember, other than the employer of the member, makes payment to the club or reimburses a member and a claim is made that the amount was paid gratuitously for the benefit of a member, a statement signed by the member indicating the donor's name and relationship to the member, and containing information to substantiate the gratuitous nature of the payments or reimbursement.

Exceptions to the record keeping requirements are:

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1. Where a group of eight or fewer individuals, at least one of whom is a member, uses club facilities, it will be assumed for audit purposes that the nonmembers are the guests of the member, provided payment for such use is received by the club directly from the member or the member's employer.
2. Where 75 percent or more of a group using the club's facilities are members, it will likewise be assumed for audit purposes that the nonmembers in the group are guests of members, provided payment for such use is received by the club directly from one or more of the members or the member's employer.
3. Solely for purposes of 1 and 2, above, payment by a member's employer will be assumed to be for a use that serves a direct business objective of the employee-member.

Where a club makes its facilities available to the general public to a substantial degree, the club is not operated exclusively for pleasure, recreation, or other non-profitable purposes.

Court Cases

Pittsburgh Press Club v. USA, 536 F.2d 572, (1976)

While the reports mandate the application of a "facts and circumstances test" in the event that gross receipts from nonmember and/or investment income reach the prohibited levels, they do not specify any of the relevant facts and circumstances that should be considered. However, the Court of Appeals in this case has indicated some factors to consider in determining exempt status.

Factors to consider in applying this test include:

- The actual percentage of nonmember receipts and/or investment income.
- The frequency of nonmember use of club facilities. (An unusual or single event (that is, non-recurrent on a year to year basis) that generates all the nonmember income should be viewed more favorably than nonmember income arising from frequent use by nonmembers).
- The number of years the percentage has been exceeded. (The record over a period of years is also relevant. The high percentage in one year, with the other years being within the permitted levels, should be viewed more favorably to the organization than a consistent pattern of exceeding the limits, even by relatively small amounts).
- The purposes for which the club's facilities were made available to nonmembers.
- Whether the nonmember income generates net profits for the organization. Profits derived from nonmembers, unless set aside, subsidize the club's activities for members and result in inurement within the meaning of IRC §501(c)(7).

GOVERNMENT'S POSITION:

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doesn't qualify for exemption under IRC §501(c)(7) as a social club due to the extensive non-member use of the facilities and services provided to the non-members. The non-member usage annually exceeds 0% of the total revenue received by

Form 990 reported income in the 20XX tax year as follows:

Total Reportable Income	\$ 0
Member Income	\$ 0
% of Income from Members	0 %
Non-Member Income	\$ 0
% of Income from Non-Member Use	0 %

Form 990 reported income in the 20XX tax year as follows:

Total Reportable Income	\$ 0
Member Income	\$ 0
% of Income from Members	0 %
Non-Member Income	\$ 0
% of Income from Non-Member Use	0 %

permits unrestricted use of its gaming activities by the general public. Year over year, receives more than the insubstantial part of its gross receipts allowed by the IRC from outside its membership. The amount received for public's use of facilities averaged 0% for the 20XX and 20XX tax years. This is considerably higher than the 15% allowed under P.L. 94-568 and shows a pattern of frequency and reoccurring use by the public. The facts of the case show that it is operating in a manner consistent with a for-profit business.

total expenses exceed the total revenue that they received for the tax years ending December 31, 20XX and December 31, 20XX.

TAXPAYER'S POSITION:

position is that they agree that non-member usage is above the 15% annually. agrees that they don't meet the requirements under IRC §501(c)(7).

CONCLUSION:

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Name of Taxpayer		

The organization doesn't qualify for exemption from federal income tax under IRC §501(c)(7).

The proposed date of the revocation is January 1, 20XX.