



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Number: **202052020**  
Release Date: 12/24/2020

UIL: 501.07-00

Date: August 6, 2020

Taxpayer ID Number:

Form:

For Tax Period(s) Ending:

Person to Contact:

Identification Number:

Telephone Number:

Fax Number:

**CERTIFIED MAIL – Return Receipt Requested**  
**LAST DAY FOR FILING A PETITION WITH THE TAX COURT:**

Dear :

This is a final determination explaining why your organization doesn't qualify as an organization described in Internal Revenue Code (IRC) Section 501(c)(7) for the tax period(s) above.

In the future, if you believe your organization qualifies for tax-exempt status and would like a determination letter from the Internal Revenue Service, you can request a determination by filing Form 1024, Application for Recognition of Exemption Under Section 501(a), or Form 1024-A, Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code (as applicable) and paying the required user fee.

Our adverse determination as to your exempt status was made for the following reasons:

During the tax year in question, you did not qualify for exemption as a social club described in IRC section 501(c)(7) because you exceeded the 35% limitation for gross receipts from sources outside your membership. You received all of your gross receipts from investment income.

Organizations that are not exempt under IRC 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](http://www.irs.gov).

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of IRC Section 7428 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 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, NW  
Washington, DC 20217

U.S. Court of Federal Claims  
717 Madison Place, NW  
Washington, DC 20439

U. S. District Court for the District of Columbia  
333 Constitution Ave., N.W.  
Washington, DC 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 IRC Section 7428.


You may 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](http://www.taxpayeradvocate.irs.gov) or call 1-877-777-4778.

Taxpayer Advocate assistance can't be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in 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 can get any of the forms or publications mentioned in this letter by calling 800-TAX- FORM (800-829-3676) or visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs).

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,

  
Sean E. O'Reilly  
Director, EO Examinations

Enclosures:  
Publication 892



**Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities**

Date:  
December 23, 2019  
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:  
ID number:  
Telephone:  
Fax:  
Address:

Manager's contact information:

Name:  
ID number:  
Telephone:  
Response due date:

**CERTIFIED MAIL – Return Receipt Requested**

Dear \_\_\_\_\_ :

**Why you're receiving this letter**

We enclosed a copy of our audit report, Form 886-A, Explanation of Items, explaining that your organization doesn't qualify as an organization described in Internal Revenue Code (IRC) Section 501(c)(3).

This letter is not a determination of your tax-exempt status under IRC Section 501 for any period other than the tax periods above.

**If you agree**

If you haven't already, please sign the enclosed Form 6018, Consent to Proposed Action, and return it to the contact person shown at the top of this letter. We'll issue a final adverse letter determining that you aren't an organization described in IRC Section 501(c)(3) for the periods above.

**If you disagree**

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.
3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to sign a consent to extend the period of limitations for assessing tax. This is to allow the IRS Appeals Office enough time to consider your case. For your protest to be valid, it must contain certain specific information, including a statement of the facts, applicable law, and arguments in support of your position. For specific information needed for a valid protest, refer to Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

Fast Track Mediation (FTM) referred to in Publication 3498, The Examination Process, generally doesn't apply now that we've issued this letter.

4. Request technical advice from the Office of Associate Chief Counsel (Tax Exempt Government Entities) if you feel the issue hasn't been addressed in published precedent or has been treated inconsistently by the IRS.

If you're considering requesting technical advice, contact the person shown at the top of this letter. If you disagree with the technical advice decision, you will be able to appeal to the IRS Appeals Office, as explained above. A decision made in a technical advice memorandum, however, generally is final and binding on Appeals.

**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 adverse determination letter.

In the future, if you believe your organization qualifies for tax-exempt status and would like a status determination letter from the IRS, you can request a determination by filing Form 1024, Application for Recognition of Exemption Under Section 501(a), and paying the required user fee.

**Contacting the Taxpayer Advocate Office is a taxpayer right**

The Taxpayer Advocate Service (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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

**For additional information**

You can get any of the forms and publications mentioned in this letter by visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or by calling 800-TAX-FORM (800-829-3676).

If you have questions, you can contact the person shown at the top of this letter.

Sincerely,



*for*

Maria Hooke  
Director, Exempt Organizations  
Examinations

Enclosures:  
Form 886-A  
Form 6018  
Publication 892  
Publication 3498

Form <b>886-A</b> (May 2017)	Department of the Treasury – Internal Revenue Service <b>Explanations of Items</b>	Schedule number or exhibit
Name of taxpayer	Tax Identification Number <i>(last 4 digits)</i>	Year/Period ended  12/31/XXXX

**ISSUE:**

Whether \_\_\_\_\_ qualifies as organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

**FACTS:**

\_\_\_\_\_ (the organization) was incorporated as a domestic not-for-profit corporation in the state of \_\_\_\_\_, on October 06, 19XX. The articles of incorporation and bylaws were requested but were not provided.

According to the representative for the organization, the original purpose of the organization was to operate as a fraternal organization. On October 22, 19XX, the organization contracted with the \_\_\_\_\_ to acquire cemetery plots for the use of members of the organization and their family. At some unknown date, the organization ceased operating as a fraternal organization, and remained in existence only because of the unused cemetery plots. A \$0 State of \_\_\_\_\_ bond was purchased to provide enough revenue to compensate an individual to tend to the affairs of the organization. When a member died and required a burial plot, the individual would contact the cemetery and notify them of the deceased member's assigned plot. The individual is also responsible for completing any paperwork required for burial.

On December 04, 19XX, the organization applied for an employer identification number (EIN) for the purpose of banking. The principal activity, as stated on Form SS-4 Application for Employer Identification Number, is to attend to the welfare of natives and their descendants of \_\_\_\_\_. On March 21, 20XX, Form 990-EZ was received by the IRS for tax years 20XX and 20XX. On Both Form 990-EZs, the organization claimed to be exempt under Section 501(c)(3) of the Internal Revenue Code. Also, both forms did not state the organization's primary exempt purpose.

For all tax years subsequent to 20XX, the organization has filed Forms 990-EZs indicating on the forms that it is exempt under 501(c)(3) of the Code. The organization filed Schedule A, Public Charity Status and Public Support, with its Form 990-EZ filed for tax year ended December 31, 20XX but did not check any of the boxes regarding its foundation status. The IRS did not receive a Form 1023 Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code from the organization.

For the year under examination, the organization's sources of revenue were investment income and the sale of an unsold burial plot. The Form 990-EZ reported total revenue of \$0 and total expenditures of \$0. Its primary expenditure was compensation paid to the president. The organization's operations consist primarily of the president allocating burial plots upon the death of a member.

**LAW:**

IRC §501(c)(3) provides exemption for corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

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Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, if upon dissolution, such assets would by reason of a provision in the organization's articles of organization or by operation of law, be distributed for one or more exempt purposes.

Treas. Reg. § 1.501(c)(3)-1(c)(1) provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3). An organization must not engage in substantial activities that fail to further an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Section 508(a)(1) of the code provides, with certain exceptions, that an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) unless it has given notice to the Secretary or his delegate that it is applying for recognition of such status. If the notice is given after the time prescribed in the regulations, section 508(a)(2) provides that the organization shall not be treated as an organization described in section 501(c)(3) for any period before the giving of such notice.

Section 1.508-1(a)(2)(i) of the Income Tax Regulations provides that the required notice is filed by the submission of a properly completed and executed Form 1023 with 15 months from the end of the month in which the organization was organized

Treas. Reg. § 1.508-1(b) provides that in general with certain exceptions any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3), and which does not notify the Commissioner within the time and in the manner prescribed in subparagraph (2) that it is not a private foundation, will be presumed to be a private foundation.

Section 1.508-1(b)(2)(i) provides that an organization must file the notice described in section 508(b) within 15 months from the end of the month in which such organization was organized, or before March 22, 1973, whichever comes later.

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Section 1.508-1(a)(2)(iii) of the Income Tax Regulations provides that an organization shall be considered organized on the date it becomes an organization described in section 501(c)(3) determined without regard to section 508(a).

Section 1.508-1(b)(2)(iv) of the Income Tax Regulations provides that any organization filing notice under this paragraph (b)(2)(iv) shall file its notice by submitting a properly completed and executed Form 1023 (or, if applicable, Form 1023-EZ) and providing information that it is not a private foundation. The organization shall also submit all information required by the regulations under section 170 or 509 (whichever is applicable) necessary to establish recognition of its classification as an organization described in section 509(a)(1), (2), (3), or (4). The notice required by this paragraph (b)(2)(iv) should be filed with the appropriate office as designated by the Commissioner in guidance published in the Internal Revenue Bulletin, forms, or instructions to the applicable forms.

Section 1.508-1(b)(3)(ii) of the Income Tax Regulations provides that if an organization has filed a notice under section 508(b) stating that it is not a private foundation and designating only one paragraph of section 509(a) under which it claims recognition of its classification (such as an organization described in section 509(a)(2)), and if it has received a ruling or determination letter which recognizes that it is not a private foundation but which fails to designate the paragraph under section 509(a) in which it is described, then such organization will be treated as described under the paragraph designated by it, until such ruling or determination letter is revoked.

Section 1.508-1(b)(7) of the Income Tax Regulations provides exceptions to this notice requirement that include an organization that is not a private foundation and the gross receipts of which are normally not more than \$5,000 in each taxable year. For purposes of this \$5,000 gross receipts exception, an organization must file the required notice within 90 days after the end of the first taxable year in which it does not qualify for the exception. See section 1.508-1(a)(3)(ii) of the regulations.

**TAXPAYER'S POSITION:**

Unknown

**GOVERNMENT'S POSITION:**

The organization was formed in 19XX to operate as a fraternal organization. It began filing Forms 990-EZ in 20XX when it filed returns for 20XX and 20XX tax years. Prior to 20XX, information is limited or non-existence relative to any prior claims of exemption that the organization may have made. It is possible that in earlier years the organization could have presumed itself to be exempt under a section of the Internal Revenue Code other than section 501(c)(3) which did not require notification to the IRS. Even if prior to 20XX the organization had deemed itself to be exempt under section 501(c)(3) of the Code, it may have presumed that it met one of the exceptions for the notice requirement as an organization that is not a private foundation that normally do not received more than \$0 in gross receipts each taxable year.

However, if the organization was determined to be described in section 501(c)(3) for 20XX, it would have been classified as a private foundation based on its sources of revenue. Assuming, its sources of revenue were the same for prior years, it would also have been classified as a private foundation in prior years. It would not have met the exception based on gross receipts for the notice requirement. Pursuant to section 1.508-1(b) of the Income Tax Regulations, since the organization did not notify the Secretary that it is not a private foundation, the organization is presumed to be a private foundation. Private foundations do not



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qualify for an exception under IRC § 508(c) even with the gross receipts of which in each taxable year are normally not more than \$0.

Regardless of any possible pre-20XX basis for exemption that the organization may have claimed, claimed exemption under Section 501(c)(3) of the Internal Revenue Code in 20XX on its filed Form 990-EZ for tax years 20XX and 20XX. The organization's activities consist of keeping track of living members and burial plots available, upon the death of a member, informed the cemetery what plot the member is entitled to, and complete any necessary paperwork. The organization was not organized or operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals.

The organization did not submit its articles of incorporation to demonstrate that it meets the organizational test to qualify for recognition of tax exempt status under section 501(c)(3) of the Internal Revenue Code. The representative of the organization stated the organization was incorporated to operate as a fraternal organization. Operating as a fraternal organization is not an exempt purpose described in section 501(c)(3).

In addition to not meeting the requirements of the organizational test, the organization also does not satisfy the operational test requirement to be recognized as exempt under section 501(c)(3) of the Internal Revenue Code. To satisfy the operational test, an organization must establish that it is operated exclusively for one or more exempt purposes. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in Section 501(c)(3) of the Code. The primary activity of identifying the burial spot and completing the necessary forms associated with deceased members is not an activity that is describe in section 501(c)(3). Thus, you are not organized and operated exclusively for charitable purposes under section 1.501(c)(3)-1(d)(2) of the regulations.

**CONCLUSION:**

does not qualify for tax exemption under Section 501(c)(3) of the Internal Revenue Code. The organization was not organized or operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals.