



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

Date: February 17, 2021

Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Release Number: **202221008**

Release Date: 5/27/2022

UIL: 501.02-00

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

**Why we are sending you this letter**

This is a final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(2), for the tax periods above. Your determination letter dated May 28, 19\_\_\_\_, is revoked.

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

Organizations described in IRC Section 501(c)(2) and exempt under IRC Section 501(a) must be both organized and operated exclusively for exempt purposes. You have not demonstrated that you are operated exclusively for holding title to the property, collecting income from the property, and turning over the entire amount of income, less expenses, to an organization which itself is exempt from federal income tax under IRC section 501(a). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. You have not established that you have operated exclusively for an exempt purpose

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).

**What you must do if you disagree with this determination**

If you want to contest our final determination, you have 90 days from the date this determination letter was mailed to you to file a petition or complaint in one of the three federal courts listed below.

**How to file your action for declaratory judgment**

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.

Please contact the clerk of the appropriate court for rules and the appropriate forms for filing an action for declaratory judgment by referring to the enclosed Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status. 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.

**Information about the IRS Taxpayer Advocate Service**

The IRS office whose phone number appears at the top of the notice can best address and access your tax information and help get you answers. However, you may be eligible for free help from the Taxpayer Advocate Service (TAS) if you can't resolve your tax problem with the IRS, or you believe an IRS procedure just isn't working as it should. TAS is an independent organization within the IRS that helps taxpayers and protects taxpayer rights. Contact your local Taxpayer Advocate Office at:

Internal Revenue Service  
Taxpayer Advocate Office

Or call TAS at 877-777-4778. For more information about TAS and your rights under the Taxpayer Bill of Rights, go to [taxpayeradvocate.irs.gov](http://taxpayeradvocate.irs.gov). Do not send your federal court pleading to the TAS address listed above. Use the applicable federal court address provided earlier in the letter. Contacting TAS does not extend the time to file an action for declaratory judgment.

**Where you can find more information**

Enclosed are Publication 1, Your Rights as a Taxpayer, and Publication 594, The IRS Collection Process, for more comprehensive information.

Find tax forms or publications by visiting [www.irs.gov/forms](http://www.irs.gov/forms) or calling 800-TAX-FORM (800-829-3676).

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

If you prefer to write, use the address shown at the top of this letter. Include your telephone number, the best time to call, and a copy of this letter.

Keep the original letter for your records.

Sincerely,



Sean E. O'Reilly

Director, Exempt Organizations Examinations

Enclosures:  
Publication 1  
Publication 594  
Publication 892



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

Date:  
October 1, 2020  
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 we propose to revoke your tax-exempt status as an organization described in Internal Revenue Code (IRC) Section 501(c)(2).

**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)(2) 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.

**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 811-777-4778

**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,

*Denise Gonzalez for*

Sean E. O'Reilly

Director, Exempt Organizations Examinations

Enclosures:  
Form 886-A  
Form 6018  
Pub 892 &  
3498

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer	Tax Identification Number (last 4 digits)	Year/Period ended

**Issue:**

Does the (Exempt Organization) continue to qualify for tax-exempt status as a title holding corporation described in section 501(c)(2) of the Internal Revenue Code (Code)?

**Facts:**

*Formation*

On June 1st, 19 , the Exempt Organization was formed as a not-for-profit corporation with the Department of State under the . The name of the organization at the time of incorporation was “ ”. On February 01, 19 , the Exempt Organization amended its organizing document to change the legal name of the organization from to the .

The corporate purposes set forth in the Exempt Organization’s organizing document (Articles of Incorporation) is as follows:

*“To promote fellowship and extend acquaintanceship by means of social gatherings and lectures; to promote social intercourse among the members by means of dances, dinners, musicals, and other forms of entertainment; to engage generally in any causes or objects similar to the above mentioned in order to promote the cultural, social, literary, and mental welfare of the members.”*

*Tax-Exempt Status*

In March 19 , the filed Form 1024, *Application for Recognition of Exemption under Section 501(a)*, with the Internal Revenue Service (IRS). Although the Exempt Organization’s corporate purposes are consistent with a social club, the organization applied for tax-exempt status as a title holding corporation described in section 501(c)(2) of the Code. The Exempt Organization provided the following narrative statement regarding their activities:

*“The Corporation was formed solely to hold a lease for rental to its parent organization – the and to others. The corporation was organized for this exclusive purpose, and to collect income from the rentals, turning over the entire amount, less expenses to its tax-exempt parent organization: ”*

In its Form 1024 application, the Exempt Organization listed rental income and sales of food and beverage as the organization’s present and future sources of financial support. The organization also indicated that it was leasing real property rather than holding title to the premises.

The IRS issued a favorable determination letter to the Exempt Organization dated May 28, 19 , recognizing the organization as exempt from Federal income tax under Code section 501(a) as a title holding corporation described in section 501(c)(2) of the Code. Copies of the

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Form 1024 application and the IRS determination letter are included with the IRS administrative file.

*IRS Audit*

In November 20 , the Tax Exempt and Government Entities division of the IRS selected for examination the 20 Form return filed by the Exempt Organization. The examination was initiated to address potential organizational and operational issues identified on the Form return and the 1024 exemption application.

*Activities*

Records secured by the IRS examiner during the Form examination show that the Exempt Organization has leased the same premises since formation. The Exempt Organization executed a lease agreement with to rent the building located at , . The Exempt Organization and landlord have extended the terms of the lease by executing lease renewal agreements that typically span -year periods. On March 01, 20 , the Exempt Organization renewed its lease agreement with a lease end date of February 28, 20 . The Exempt Organization has an annual lease obligation of \$ , for the -year lease renewal period. In addition to the monthly rent, the Exempt Organization has made significant leasehold improvements over the years. The Exempt Organization maintains the premises and pays for utilities pursuant to the terms of the lease agreement.

The Exempt Organization maintains a bar on the premises stocked with liquor and other beverages. The bar area is adjacent to the main meeting hall which can accommodate large gatherings for meetings and other social functions. The Exempt Organization maintains the property and facilities for use by the members of its parent entity, . is itself tax-exempt as a fraternal organization described in section 501(c)(8) of the Code. Members of use the premises for their regular meetings and other fraternal activities and events conducted by . The Exempt Organization and have a verbal agreement for the payment of rent, utilities, and other expenses. made monthly payments to the Exempt Organization in the amount of \$ , according to financial records furnished by the Exempt Organization to the IRS examiner. also made other payments to cover certain bar, beverage and related costs incurred by the Exempt Organization.

Contracts and financial records secured from the Exempt Organization for the 20 tax year shows that the organization rents out the facilities and provides bar and beverage service to members of the public for private parties, wedding receptions and other events. The Exempt Organization reported gross receipts in the amount of \$ , on the 20 Form return. Gross receipts include the \$ , in rent paid by which is characterized as investment income on the return. The balance of receipts, \$ , , is reported as gross sales of inventory in Part I, line 7a of the return. This amount is comprised of public use of the Exempt Organization's facility including bar and beverage sales. A review and analysis of the contracts

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shows that approximately \$ , of the \$ , in sales of inventory was generated from bar and beverage sales with the remaining revenue attributable to the rental of the facilities. The Exempt Organization reported a net loss from its operations in the amount of \$ , on the 20 Form return.

**Tax Law:**

Section 501(c)(2) of the Code provides for exemption from federal income tax of corporations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of income, less expenses, to an organization which itself is exempt from federal income tax under section 501(a).

Section 1.501(c)(2)-1(a) of the Income Tax Regulations provides that since a corporation cannot be exempt under section 501(c)(2) of the Code if it engages in any business other than that of holding title to property and collecting income therefrom, it generally cannot have unrelated business taxable income as defined in section 512. Certain exceptions described in the regulations such as debt financed income under section 514 are not pertinent here.

Section 501(c)(25)(G) of the Code, which was enacted as part of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93), allows IRC 501(c)(2) and IRC 501(c)(25) title holding organizations to receive unrelated business income of up to 10 percent of its gross income, provided that the unrelated business income is incidentally derived from the holding of real property. Congress enacted IRC Section 501(c)(25)(G) believing revocation to be a harsh solution to an IRC Section 501(c)(2) or an IRC Section 501(c)(25) organization receiving small amounts of UBI that is incidentally derived from holding real property. Examples of incidentally derived income are parking revenue and income from vending machines. It should be noted that regulations section 1.501(c)(2)-1(a) cited above does not reflect the statutory amendment prescribed by section 501(c)(25)(G).

Section 512(b)(3) of the Code excludes from the determination of unrelated business taxable income rents from real property.

Section 7805(b) provides discretionary authority to determine the extent to which any ruling may apply without retroactive effect as provided in Revenue Procedure 2020-5, 2020-1 I.R.B. 241.

Section 12.03 of the Revenue Ruling provides that the revocation or modification of a determination letter may be retroactive (as applicable) if:

- (1) there has been a change in the applicable law;
- (2) the organization omitted or misstated material information. A misstatement of material information includes an incorrect representation or attestation as to the organization's organizational documents, the organization's exempt purpose, the organization's conduct of prohibited and restricted activities, or the organization's eligibility to file Form 1023-EZ;

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(3) the organization operated in a manner materially different from that originally represented in an application for recognition of exemption.

Section 12.04 provides that an organization may seek relief from retroactive revocation or modification of a determination letter under IRC § 7805(b) by submitting a written request to the agent or specialist assigned to the case before issuance of the final adverse determination letter in the required format. IRM 4.75.13.8.5 provides that the agent or specialist may independently determine that circumstances warrant limiting retroactivity under IRC § 7805(b).

Rev. Rul. 58-566, 1958-2 C.B. 261. A corporation will not be considered a holding company within the meaning of IRC 501(c)(2) where it has broad powers and business purposes far beyond the scope necessary to a holding company. Furthermore, where part of its income is used to reduce indebtedness on property which will ultimately revert to private individuals, it will not be considered as being operated for exempt purposes.

Revenue Ruling 69-278, 1969-1 C.B. 148, found that a title holding corporation renting a building and trucks under separate unrelated leases to exempt fraternal beneficiary societies is engaged in the business of renting personal property independent of real property and is not exempt as a Section 501(c)(2) organization.

Rev. Rul. 69-381, 1969-2 C.B. 113, held that a title holding corporation that leases a building to the general public and turns over the rents less expenses incident to the operation and maintenance of the building to its parent, an exempt charitable organization, is not precluded from exemption as a Section 501(c)(2) organization.

*Stanford University Bookstore v. Commissioner*, 29 B.T.A. 1280, aff'd, 83 F.2d 710, denied recognition under Section 501(c)(2) to a student bookstore because its activities constituted business beyond merely holding title to property. It did not matter that income was turned over to an exempt organization.

*Sand Springs Railway Co. v. Commissioner*, 31 B.T.A. 392, denied recognition under Section 501(c)(2) to a public utility because its activities constituted business beyond merely holding title to property. It did not matter that income was turned over to an exempt organization.

**Government's Position:**

A review of the Exempt Organization's organizing document, contracts, and financial records shows that the organization is not properly organized or operated exclusively for 501(c)(2) purposes. The information and records included with the Form 1024 application filed by the Exempt Organization shows that although the Exempt Organization disclosed non-exempt sources of income, the organization was granted a favorable determination letter. The organization should not have received a favorable determination status under IRC 501(c)(2). The issue of whether the Exempt Organization is exempt under section 501(c)(2) or another subsection of the Code is based on the examination of the 20 Form return.



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*Exempt Organization Not Properly Organized for 501(c)(2) Exempt Purposes*

IRC Section 501(c)(2) refers to corporations "organized for the exclusive purpose" of holding title to property and collecting income. The Exempt Organization's Articles of Incorporation does not specify or describe any corporate purposes that are akin to holding title to property and collecting income therefrom. Rather, the corporate purposes set forth in the Exempt Organization's corporate charter are consistent with a social club. Since the Exempt Organization was not formed for the "exclusive purpose" required by the statute, the organization is not properly organized. See also Rev. Rul. 58-566.

*Exempt Organization Not Properly Operated for 501(c)(2) Exempt Purposes*

The facts ascertained from the examination of the 20 Form return and the underlying books and records reveals the following facts and circumstances concerning the Exempt Organization's operations:

- Exempt Organization does not hold title to property.
- Exempt Organization provides bar and beverage sales and service for private functions.
- Exempt Organization derived more than % of its total revenue from bar and beverage sales.

Records show that the Exempt Organization leases real property from an unrelated party which it then rents out to its parent entity and members of the public. Although the organization made significant improvements to the property, it does not have any equity or other form of ownership interest in the premises. Accordingly, the Exempt Organization does not meet the fundamental requirement under the statute of holding title to property.

The IRS asserts that the bar and beverage service conducted by the Exempt Organization is a prohibited activity. Section 1.501(c)(2)-1(a) specifically prohibits a title holding corporation from engaging in any activity other than holding title to property and collecting income therefrom. Although OBRA 93 allows an organization exempt under section 501(c)(2) to derive up to 10 percent of its gross income in the form of incidentally derived unrelated business income, the Exempt Organization's bar and beverage service is not considered incidental to its rental activity. Furthermore, the facts show that the Exempt Organization derives approximately % of its gross receipts from bar and beverage sales. The Exempt Organization fails to operate within the statutory requirements of section 501(c)(2) as amended by OBRA 93. See *Stanford University Bookstore v. Commissioner*. See also *Sand Springs Railway Co. v. Commissioner* and Rev. Rul. 69-278.

*Relief from Retroactive Revocation*

The IRS determined that the exempt organization merits relief from retroactive revocation under § 7805(b) because the IRS erroneously granted exempt status to an organization that did not qualify as a title holding corporation described in § 501(c)(2) of the Code. There has been no change in the applicable law. Exempt Organization did not omit or mistake material

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information. Organization's income sources remain as reported on its application for exemption and information returns. Further, Exempt Organization does not operate in a manner materially different from that represented on its application for exemption.

**Exempt Organization's Position:**

The Exempt Organization agrees in principle with the government's position concerning the proposed revocation of the organization's exemption under section 501(c)(2). The Exempt Organization had relied on the fact that the organization disclosed its activities, including the sale of alcohol and beverages, at the time the Form 1024 application was filed. The Exempt Organization believed that their activities were accepted by the IRS since a favorable determination letter had been issued. The Exempt Organization now understands that section 501(c)(2) of the Code provides for exemption from federal income tax of corporations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of income, less expenses, to an organization which itself is exempt from federal income tax under section 501(a). The Exempt Organization acknowledges that its organizing document and the activities conducted by the organization are beyond the scope of section 501(c)(2) statutory requirements and is grounds for revocation of their exempt status.

**Conclusion:**

For the reasons described in detail above, the Exempt Organization does not qualify for exemption as a title holding corporation described in section 501(c)(2) of the Code. The IRS grants relief under section 7805(b) and proposes to revoke the Exempt Organization's tax-exempt status effective January 1, 20 . Please refer to the attached 30-day letter and IRS publications for the options available to the organization including appeal rights.

Should this revocation be upheld, Form 1120 must be filed starting with tax periods ending

**If you agree to this conclusion, please sign the attached Form 6018.**

**If you disagree please see the attached Letter 3618 for your options.**