



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO Box 2508
Cincinnati, OH 45201

Date: 04/13/2022

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Release Number: 202227010

Release Date: 7/8/2022

UIL: 501.00-00, 501.07-00, 501.07-03, 501.07-05

Dear _____ :

This letter is our 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)(7). 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 the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. Read the enclosed Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 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 call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Letter 437

Redacted Letter 4034

Redacted Letter 4038



Department of the Treasury
 Internal Revenue Service
 PO Box 2508
 Cincinnati, OH 45201

Date: 02/08/2022

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

- B = State
- C = Date
- D = Organization 1
- E = Organization 2
- F = Organization 3
- g percent = Number
- h percent = Number
- j percent = Number

UIL:

- 501.00-00
- 501.07-00
- 501.07-03
- 501.07-05

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(7). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under IRC Section 501(c)(7)? No, for the reasons stated below.

Facts

You were formed as a nonprofit corporation in the state of B on C. According to your Articles of Incorporation, your specific and primary purposes "are to effect the association of members in good standing of D for fraternal charitable and benevolent purposes, and for their mutual benefit and social betterment." Your bylaws further state that your purposes include:

To effect the establishment and operation of club facilities for the exclusive pleasure, recreation, and entertainment of members of the association and eligible guests; to purchase, lease, hold, sell, develop, build, mortgage, deed in trust, convey or otherwise acquire and dispose of real and personal property, and to maintain and operate the property for the use and enjoyment of all members.

You were created to hold the title and manage the real property in which D and its members utilize. You provide a meeting place for your members and their eligible guests. Your members must be bona fide members of D. Your meeting place can be rented by the general public on a limited basis during weekends and other

hours when not being used by members. In addition to the meeting place, there is a gas station located on your property. E lease the gas station from you and operate a F gas station.

According to your three tax years reported on Form 1024, you did not charge any membership dues and assessments. Your primary source of income was non-member income which includes gas station lease payments from E and meeting place rental income from the general public. Your gas station lease income was about h percent and meeting place rental income was about g percent of the total gross receipts. The total non-member income was about j percent of your total gross receipts. You stated the lease payments from E are used for the continued maintenance and repair of the meeting place for the exclusive benefit of the membership.

Law

IRC Section 501(c)(7) provides for the exemption of 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 Section 1.501(c)(7)-1(a) states that the exemption provided by IRC Section 501(a) for an organization described in 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 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 recreational clubs which are supported solely by membership fees, dues, and assessments.

Treas. Reg Section 1.501(c)(7)-1(b) states 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 IRC Section 501(a). An incidental sale of property will not deprive a club of its exemption.

Revenue Ruling 58-589, 1958-2 C.B. 266 set forth the criteria for exemption under IRC Section 501(c)(7) and provides that a club may lose its exemption if it makes its facilities available to the general public. A club will not be denied exemption merely because it receives income from the general public provided such participation is incidental to and in furtherance of its general club purposes. To retain exemption a club must not enter into outside activities with the purpose of deriving profit. If such income producing activities are other than incidental, trivial or nonrecurrent, it will be considered that they are designed to produce income and will defeat exemption.

Rev. Rul. 66-149, 1966-1 C.B. 146 states a social club is not exempt from federal income tax as an organization described in IRC Section 501(c)(7) where it regularly derives a substantial part of its income from non-member sources. To the extent that income is derived from non-member sources, it inures to the benefit of the members. If such activities are other than incidental, trivial, or non-recurrent, it is considered that they are intended to produce income and are reflective of a purpose inconsistent with exemption under Section 501(c)(7).

Rev. Rul. 69-220, 1969-1 C.B. 154, held a social club that receives a substantial portion of its income from the rental of property and uses such income to defray operating expenses and to improve and expand its facilities is not exempt under IRC Section 501(c)(7). The club purchased an office building, part of which is used as a club house. That part of building not used as a clubhouse is leased to commercial tenants. The club uses the net income from the rental operation to make capital improvements and to expand the facilities offered to its

members. The club is not exempt under Section 501(c)(7) because it is regularly engaged in a business ordinarily carried on for profit and because net income from the activity is inuring to the members of the club.

Public Law 94-568, 1976-2 C.B. 596, provides that a social club may receive up to 35% of its gross receipts, including investment income, from sources outside its membership without losing exemption. Within this 35% amount, not more than 15% 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% 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% of the total receipts.

Application of law

Per Treas. Reg. Section 1.501(c)(7)-1(a), part of your activities are for pleasure, recreation, or other nonprofit purposes. However, a substantial part of your income is derived from non-member sources, and as a result, income from non-member sources is used to defray membership costs resulting in inurement to members. These reasons disqualify you from exemption under IRC Section 501(c)(7).

Your lease and rental income are not incidental and therefore are described as prohibited sales activities in Treas. Reg. Section 1.507(c)(7)-1(b) that do not promote a social or recreational purpose. While an organization exempt under IRC Section 501(c)(7) may conduct traditional, permissible business activities, these may not constitute more than 15% of total gross receipts. Further, generally 35% of your gross receipts cannot come from sources outside of your memberships. Your income generating activities are regular and not incidental, totaling well over the allowed 35% and 15% thresholds under Public Law 94-568.

Rev. Rul. 58-589 describes how these aforementioned income producing activities removed you from consideration as operating exclusively for purposes under IRC Section 501(c)(7). Participation with these sources of revenue must be incidental to and in furtherance of general club purposes and a club must not enter into outside activities with the purpose of deriving profit. As no member dues are charged, you are reliant on lease and rental income for your operations. These income are not trivial, incidental, or non-recurring but are your primary sources of income, paid to you regularly.

You are similar to the organizations denied exemption in Rev. Rul. 66-149 and Rev. Rul. 69-220 because your income producing activities are recurring, rather than sporadic, and produce income over the allowable limits from non-member sources. Your lease and rental activities are conducted with the purpose to generate income, decreasing the amounts needs to be contributed by your members. The non-member income is supporting your operations, and as it is decreasing the obligations of funds required to be paid by your members, it is inuring to their benefit.

Conclusion

You do not qualify for exemption under IRC Section 501(c)(7). While you are conducting social and recreational activities, you exceed the allowable level of non-member income. Accordingly, you cannot be granted exemption under Section 501(c)(7).

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.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, 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 they haven'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 gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

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

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
PO Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest 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 they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

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 if 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 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements