



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

Date: May 10, 2021

Taxpayer ID number:

Form:

Tax periods ended:

Release Number: 202233015

Release Date: 8/19/2022

UIL Code: 501.07-00

Person to contact:

Name:

ID number:

Telephone:

Fax:

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)(7), for the tax periods above. Your determination letter dated November 19 , is revoked.

Our adverse determination as to your exempt status was made for the following reasons: You no longer qualify for exemption under IRC Section 501(c)(7), as your non-member income has exceeded the 35% non-member income limit and the 15% income from non-member use of facilities limit set by Public Law 94-568.

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.

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. 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.

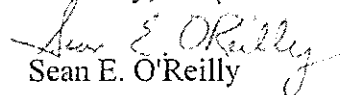
Find tax forms or publications by visiting www.irs.gov/forms or calling 800-TAX-FORM (800-829-3676).

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:
September 1, 2020
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:
ID number:
Telephone:
Fax:

Manager's contact information:

Name:
ID number:
Telephone:

Response due date:
October 1, 2020

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)(7).

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)(7) 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 or call 877-777-4778.

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 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,

Peter Jensen for

Sean O'Reilly

Director, Exempt Organizations Examinations

Enclosures:
Form 886-A
Form 6018

Form 886-A	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit Exhibit 1
Name of taxpayer	Tax Identification Number (<i>last 4 digits</i>)	Year/Period ended

THIS IS AN INITIAL REPORT

ISSUE:

Whether the tax-exempt status of _____, an IRC Section 501(c)(7) social club, should be revoked due to excessive non-member income.

FACTS:

A review of the _____ Secretary of State website on _____, shows that _____ (“_____”) incorporated in _____ on _____, its principal office is in _____; and it’s active and in good standing with the state. The Form _____ for the fiscal year ending _____, (“_____ Form _____”) states that the _____ purpose is to promote recreational _____.

The IRS issued a ruling for tax exempt status in _____, recognizing the _____ exemption under IRC 501(c)(7) of the Internal Revenue Code (“the Code”). For fiscal years _____ up to the present, the timely filed Form _____ and _____. The _____ Form _____, Part VIII, line 2a, lists hall rental income (\$ _____) as income from leasing to member _____. Member _____ clubs include such clubs as _____, _____ (_____), _____, etc. Per contract for “Regular Member User”, provided by the _____, the “User” (_____ club) will maintain a minimum of _____ % membership and a special assessment of \$ _____ per person will be charged all _____ not members of the _____. Membership cards are to be checked to verify membership, unless the person is known to be a member. In Part VIII, line 6a, gross rents \$ _____ represented the _____ unrelated trade or business income. In addition, the _____ reported _____ % of its gross rents \$ _____ on Form _____ and took the \$ _____ specific deduction. On the Form _____ unrelated business taxable income was a net loss of (\$ _____) that resulted in an overpayment of \$ _____. The organization chose to apply the overpayment of \$ _____ to estimated tax payments for the fiscal year ending _____.

The _____ owns the building in which it conducts its activities. The _____ runs _____ and rents them out to member and non-member _____ groups. The sources of the _____ income are: membership dues, rental income from leasing the two halls to member and non-member _____ groups, donations and interest income.

On _____, Internal Revenue Agent _____ (“the Agent”) interviewed _____ (“the Treasurer”) and _____, POA, CPA (“the Accountant”). The Treasurer discussed that the _____ has membership requirements; the club rents the _____ to member and non-member _____ groups.

In addition, the Accountant and the Treasurer discussed that they were not aware of Revenue Procedure 71-17 or Senate Report 94-1318. They provided contracts for member and non-member _____ groups.

On _____, the Agent conducted an examination of the _____ books and records. The scope of the examination is to schedule and analyze the _____ records to determine if the _____ records comply with the record keeping requirements of Revenue Procedure 71-17; and, to determine if the _____ is organized and _____.

Form 886-A	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit Exhibit 1
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operated exclusively for pleasure, recreation, and other nonprofitable purposes within the meaning of Public Law 94-568 (Senate Report 94-1318).

The Agent located records substantiating gross receipts derived from non-members. The Treasurer provided a folder with rental contracts for fiscal year ending . Some of the contracts were signed with member groups and some of the contracts were signed with outside non-member groups. Member groups usually pay \$ for a Large per event and \$ for a Small per event. The non-member fee usually varies between \$ - per event.

The books and records reported income from following sources for the year ending :

Table 1 Sources of income for the year ending

Sources of income	Member/Non-Member	Amount
Membership dues	Member	\$
Program Income	Member	\$
Donations	Member	\$
Guest fees	Member	\$
Rental –	Member	\$
Rental Other	Non-member	\$
Income per P&L Statement for the fiscal year		\$

On Agent mailed Information Document Request (IDR) # 0002 for the year ending , thereby extending the audit to the next year. IDR # 0002 requested file, contracts with clubs, bank statements, membership list, etc.

On Agent received the response from the . The provided the requested documents in IDR # 0002.

The books and records reported income from following sources for the year ending :

Table 2 Sources of income for the year ending

Sources of income	Member/Non-Member	Amount
Membership dues	Member	\$
Donations	Member	\$

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Name of taxpayer	Tax Identification Number (last 4 digits)	Year/Period ended

Guest fees	Member	\$
Rental –	Member	\$
Rental Other	Non-member	\$
Income per P&L Statement for the fiscal year		\$

The Form reported income from the following sources for the year ending and

Table 3 Comparison of the income on Form for the years ending and

Description	Sources of income	Amount for year ending	Amount for year ending
Membership dues - Part VIII, line 1b	Member	\$	\$
Program Income Part VIII, line 2b	Member	\$	0
Donations - Part VIII, line 1f	Member	\$	\$
Guest fees Part VIII, line 2c	Member	\$	\$
Rental, Part VIII, line 2a	Member	\$	\$
Gross rents - Part VIII, line 6a	Non-member	\$	\$
Total revenue		\$	\$

The also filed Form for both and years. The non-member income – rent from the - was reflected on Forms .

Table 4 Comparison of the income on Form for the years ending and

Description	Amount for year ending	Amount for year ending
Rent income – Part I, line 6	\$	\$

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Repairs and maintenance Part II, line 16	(\$)	(\$)
Interest (Rental of hall) – Part II, line 18	(\$)	(\$)
Taxes and licenses – Part II, line 19	(\$)	(\$)
Depreciation – Part II, line 21	(\$)	(\$)
Other deductions (Insurance, utilities)– Part II, line 28	(\$)	(\$)
Total deduction	(\$)	(\$)
UBI before specific deduction	(\$)	(\$)
Unrelated business taxable income - Part II, line 34	(\$)	(\$)

On Form for the year ending the claimed net income (Revenue less expenses, Part I, line 19) in amount of \$. The included net loss of (\$) from Form as Other revenue on Part I, line 11 on Form . This net loss of (\$) is rental income received from non-members of the club minus expenses that were reflected on for the same fiscal year.

On Form for the year ending the claimed net income (Revenue less expenses, Part I, line 19) in the amount of \$. The included net loss of (\$) from Form as Other revenue on Part I, line 11 on Form . This net loss of (\$) is rental income received from non-members of the club minus expenses that were reflected on for the same fiscal year.

The table below lists an analysis of the receipts identified during the examination or reported on Form .

Table 5 Non-member income percentage for - years

Reporting Year	Total Income ¹	Total nonmember income ²	Nonmember income % of total income
	\$	\$. %
	\$	\$	%

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Name of taxpayer	Tax Identification Number (<i>last 4 digits</i>)	Year/Period ended

	\$	\$	%
	\$	\$	%

Table footnotes:

- 1: Per Form , Part V, line 1h+2g+6a
- 2: Per examination or Form , Part V, line 6a Gross Rents
- 3: Per Form , Part I, line 19

LAW:

Section 501(c)(7) of the Internal Revenue Code (the Code) provides for the exemption from federal income tax for clubs organized for pleasure, recreation, and other nonprofitable 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 exemption provided by Section 501(a) of the Code for organizations described in Section 501(c)(7) of the Code 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 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.

Treasury Regulation Section 1.501(c)(7)-1(b) states 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, timber, or other products, is not organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, and is not an exemption under Section 501(a) of the Code. 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 purpose. However, an incidental sale of property will not deprive a club of its exemption.

The Senate Report 94-1318 to Public Law 94-568, 1976-2 C.B. 896, provides that a social club may receive up to 35 percent of its gross receipts, including investment income, from sources outside its membership without losing exemption. Within this 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 a club exempt from taxation described in Section 501(c)(7) is to be permitted to 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.

Revenue rulings:

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Revenue Ruling 66-149, 1966-1 C.B. 146, held that a social club is not exempt from Federal income tax as an organization described in Section 501(c)(7) of the Internal Revenue Code of 1954 where it regularly derives a substantial part of its income from nonmember sources such as, for example, dividends and interest on investments which it owns. However, a club's right to exemption under section 501(c)(7) of the Code is not affected by the fact that for a relatively short period a substantial part of its income is derived from investment of the proceeds of the sale of its former clubhouse pending the acquisition of a new home for the club.

Revenue Ruling 69-219, 1969-1 C.B. 153, held that a social club that regularly holds its golf course open to the general public and charges established green fees that are used for maintenance and improvement of club facilities is not an exemption under Section 501(c)(7) of the Code.

Revenue Ruling 60-324, 1960-2 C.B. 173, held that a social club which has been granted exemption from Federal income tax under Section 501(c)(7) of the Code of 1954 may lose its exemption if it makes its club facilities available to the general public on a regular, recurring, basis since it may then no longer be considered to be organized and operated exclusively for its exempt purpose.

Revenue Ruling 67-428, 1967-2 C.B. 204, held that a federation of clubs does not qualify for exemption from Federal income tax under section 501 (c) (7) of the Internal Revenue Code of 1954.

Revenue Ruling 58-589, 1958-2 C.B. 266, held that a social club must establish (1) that it is a club both organized and operated exclusively for pleasure, recreation and other nonprofitable purposes. To meet the first requirement, there must be an established membership of individuals, personal contracts and fellowship. A commingling of the members must play a material part in the life of the organization.

Court cases:

In *Pittsburgh Press Club v. USA*, 536 F.2d 572, (1976), the Court held that while the reports mandate the application of a "facts and circumstances test" if gross receipts from nonmember and/or investment income reach the prohibited levels, they do not specify any of the relevant facts and circumstances to consider. However, the Court of Appeals in this case 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's 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).

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Name of taxpayer	Tax Identification Number <i>(last 4 digits)</i>	Year/Period ended

- 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).

In *Polish American Club Inc v. Commissioner* 33 T.C.M 925 (1974) the Court held that making club facilities available to the general public, for a fee, represented a substantial activity disqualifying the club from exemption under Section 501(c)(7) of the Code.

Revenue procedures:

Revenue. Procedure. 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 section 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; and,
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

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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 these record keeping requirements are:

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 club 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.

GOVERNMENT'S POSITION/ANALYSIS:

Under the guidance of the Pittsburgh Press Club v. USA, when nonmember income reaches a prohibited level, the following facts and circumstances come into consideration:

- The frequency of nonmember usage 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).

Based upon the facts, the gross receipts from nonmembers are both substantial and recurring. The does not qualify for exemption as a social club described in Section 501(c)(7) of the Code. (Treasury Regulation Section 1.501(c)(7)-1(a))

Revenue Rulings 67-428 and 58-589 hold that a club must have a membership of individuals, personal contacts, and fellowship. A commingling of members must play a material part in the activities of the

Form 886-A	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit Exhibit 1
Name of taxpayer	Tax Identification Number <i>(last 4 digits)</i>	Year/Period ended

organization. Although fellowship need not be present between each member and every other member of the club, it must constitute a material part of the organization's activities. A club can't have other clubs as members of the club. These revenue rulings support the position that an organization must have membership with individuals to qualify under Section 501(c)(7).

Revenue Rulings 66-149, 69-219, and, 60-324 support the position that a social club described in Section 501(c)(7) of the Code which regularly derives a substantial part of its income from nonmember sources is not exempt from Federal income tax.

Revenue Procedure 71-17 (Rev. Proc. 71-17) requires, Section 501(c)(7) organizations, to maintain adequate records to substantiate the gross receipts derived from nonmembers. Section 4 of Rev. Proc 71-17 provides the recordkeeping requirements that Section 501(c)(7) organizations are required to prepare and maintain

The Senate Report 94-1318 to Public Law 94 568, 1976 2 C.B. 896, quantitatively defines substantial amounts of income from nonmembers. The report supports the position that a social club, which is open to the general public, is permitted to receive up to 35 percent of their gross receipts, including investment income, from sources outside of their membership without losing their tax-exempt status. It is also intended that within this 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. It appears from fiscal years _____ and _____ that the _____ activities exceeded these limitations.

In *Polish American Club Inc v. Commissioner*, the courts' decision supports the position that a social club described in Section 501(c)(7) of the Code which regularly derives a substantial part of its income from nonmember sources, on a recurring basis, is not exempt from Federal income tax.

TAXPAYER'S POSITION

On _____ Agent _____ discussed with the power of attorney (POA) a potential revocation of tax exemption and extending an audit for subsequent year via telephone call. The POA said that they are going to protest to the IRS Office of Appeals.

CONCLUSION

_____ no longer qualifies for exemption under Section 501(c)(7) of the Code as its non-member income has exceeded the _____ % non-member income limit, and the _____ % income from non-member use of facilities limit set by Congress and the courts. Therefore, the IRS proposes to revoke its exempt status under Section 501(c)(7) of the Code for the years ended _____ and _____.