



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

Date: 07/26/2022

Employer ID number:

Person to contact:

Number: **202242013**

Release Date: 10/21/2022

UIL: 501.07-00, 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](http://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: 05/16/2022

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

**Legend:**

W = State  
X = Date  
Y = County  
Z = Percentage  
A = Percentage  
B = Percentage  
C = Number of Units  
D = Number of Units  
E = Number

**UIL:**

501.07-00  
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 incorporated in the state of W on X. You have never been issued a determination letter for exempt status by the Internal Revenue Service and you have been filing corporate tax returns since the year of your formation.

Your purpose as stated in your Articles:

is to provide an entity pursuant to the W Condominium Act as it exists on the date hereof (the "Act") for the operation of that certain condominium located in Y, W.

Upon dissolution, no income shall be distributed to members, directors, or officers. All assets shall be transferred only to another non-for-profit corporation or public agency or as otherwise authorized by your state's Not-For-Profit Corporation Statute.

Your powers are subject to and are exercised in accordance with the provisions of the Articles, Declaration, Bylaws, and the W Act. In the event of conflict, the provisions of your state's Act shall control.

You have the powers and duties reasonably necessary set forth in the W Act to operate the condominium pursuant your Articles of Incorporation:

- To make and collect assessment and other charges against members and unit owners
- To buy, own, operate, lease, sell, trade and mortgage both real and personal property
- To maintain, repair, replace, reconstruct, add to, and operate the condominium property and other property acquired or leased
- To purchase insurance for the condominium property and for the you and officers, directors, and unit owners
- To make and amend reasonable rules and regulation for the maintenance, conservation and use of the condominium property
- To approve or disapprove the leasing transfer owners and possession of the units as may be provided by the declaration
- To enforce by legal means the provisions of the W Act, the Declaration, these Articles and the By-laws and Rules and Regulations for the use of the condominium property, subject, however, to the limitation regarding assessing Units owned by the Developer for fees an expense relating in any way to claims or potential claims against the Developer as set forth in the Declaration and/or By-Laws.
- To contract for the management and maintenance of the condominium property and to authorize a management agent (which may be an affiliate of the developer) to assist you
- To employ personnel to perform the services required for the operation of the condominium

You describe yourself as a social club with your activities and percentage break down as follows:

- Launch and retrieval of boats for storage in the boat barn Z%
- Rental of storage racks A%
- Sale of fuel to members and the public A%
- Rental of clubhouse facility to members and the public on a first come basis B%

Your application indicates you have two classes of membership, Class A and Class B. However, when asked to provide information about your Class B membership, you indicated that there is only one membership class.

Your membership consists of all the title record owners of condominium units. Your Bylaws provide that assessments are made on unit owners. Unit owners are entitled to one vote for each unit they own within the condominium.

You are governed by a board of directors. The developer of the condominium selected the initial board. Subsequently, unit owners vote for the board of directors at the annual meeting. A director need not be a unit owner to serve.

Unit owners receive the following services and accesses:

- An enclosed dry storage building with C units available for storage of member vessels
- A constructed wet slip for D units

- A clubhouse
- An outdoor swimming pool
- An underground fuel storage tank
- Pick-up and boat delivery, valet service
- Marine engine repair service and detailing

Your website indicates that you offer secure indoor storage and modern equipment, including a E indoor storage racks and wet slips for rent or sale. It indicates that boats will be safe and secure with a 24-hour security system. These features combined with your premier boating valet services, ensure that unit owners' boats will be in water safely and promptly. You offer a call ahead service which allows a member to tell your staff when he wants his boat ready for cruising. Your professional boat lift operators will carefully launch member's boat so that it is waiting for the owner. And at the end of the day, your staff washes the exterior, flushes the engine, and safely stores the boat on the members' storage rack.

Your event venue includes your clubhouse, pool, tiki hut and ample parking available to members and the public. It is a described as a premier event venue for weddings, receptions, showers, corporate or personal events. Contact information is posted for bookings and additional information.

Your income derives from member assessments and special assessments, rental income from the temporary storage of wet slips, fuel sales, service fees for repairs and maintenance of boats, service merchandise sales and clubhouse rentals. Your expenses include payroll and wages, repairs and maintenance, general insurance, bank charges, legal and accounting, landscaping, and submerged lease fee.

#### **Law**

IRC Section 501(c)(7) of the Code exempts from federal income tax of clubs organized and operated for pleasure, recreation and other non-profitable purposes, substantially all the activities of which are for such purpose and no part of the net earnings of which insure to the benefit of any private shareholder.

IRC Section 501(c)(7) was amended in 1976 by Public Law 94-568 to provide that Section 501(c)(7) organizations could receive some outside income without losing their exempt status. Senate Report No. 94-1318 (1976), 2d Session, 1976-2 C.B. 597, at page 599 explains that a social club is permitted to receive up to 35 percent of its gross receipts, including investment income, from sources outside of its membership without losing its 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 public. In effect, the latter modification increases from 5 percent (Rev. Proc. 71-17, 1971-1 C.B. 683) to 15 percent the proportion of gross receipts a club may receive from making its club facilities available to the public without losing its tax exempt status. The Senate Report also states that it is not intended that these organizations should be permitted to receive, within the 15 percent or 35 percent allowances, income from the active conduct of businesses not traditionally carried on by these organizations.

The Senate Finance Committee Report, above, further states that gross receipts are defined for this purpose as those receipts from normal and usual activities of the club (that is, those activities they have traditionally conducted) including charges, admissions, membership fees, dues, assessments, investment income (such as dividends, rents, and similar receipts), and normal recurring capital gains on investments but excluding initiation fees and capital contributions.

IRC Section 512(a)(3)(B) of the Code defines "exempt function income" as the gross income from dues,

fees, charges, or similar amounts paid by members of the organization as consideration for providing such members or their dependents or guests' goods, facilities, or services in furtherance of the purposes constituting the basis for the exemption of the organization to which such income is paid.

Treasury Regulation Section 1.501(c)(7)-1(a) provides that, in general, the exemption extends to social and recreation clubs supported solely by membership fees, dues and assessments. However, a club that engages in a business, such as making its social and recreational facilities open to the public, is not organized, and operated exclusively for pleasure, recreation, and other non-profitable purposes, and is not exempt under section 501(a).

Treas. Reg. Sec. 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 public or selling real estate, timber 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).

Revenue Ruling 58-589, 1958-2 C.B. 256 states that a social club's business activity will defeat exemption unless it is incidental, trivial, or nonrecurrent; which the IRS has interpreted to mean insubstantial for this purpose. Additionally, it provides that there must be an established membership of individuals with personal contacts, and fellowship. A commingling of the members must play a material part in the life of the organization.

Rev. Rul. 68-168, 1968-1 C.B. 269, holds a nonprofit organization that leases building lots to its members on a long-term basis is not exempt under IRC Section 501(c)(7). The organization was formed on a nonprofit basis to develop a lake and adjacent areas to provide facilities for the pleasure and recreation of its members. The organization acquired substantial acreage and after developing recreational facilities on a portion of the acreage, subdivided the remaining land into building lots which it leases to members for ninety-nine years. Receipts of the organization are primarily derived from initial payments and annual rentals. The subdividing and leasing of lots as described constitutes engaging in business. Although the revenues from this activity are derived from the organization's members only, the revenues are not raised from members' use of its recreational facilities or in connection with organizations recreational activities. The conduct of such real estate activity, whether with members only or with the public is not incident to or in furtherance of any purposes covered by Section 501(c)(7). The organization did not qualify for exemption from Federal income tax under section Section 501(c)(7).

Rev. Rul. 68-535, 1968-2 C.B. 219, describes a social club which in addition to selling liquor to members in the bar and restaurant, also regularly sells liquor by the bottle to members for consumption off the premises and accepts orders for delivery to members at their homes. Purchases are made by members only. The revenue ruling concludes that the sale of liquor to members for consumption off the club's premises does not constitute the raising of income from members through the use of the club's facilities or in connection with club activities within the meaning of Treas. Reg. Section 1.507(c)(7)-1 of the regulations. It is a service to the members that is neither related to nor in furtherance of a social club's exempt purposes. Therefore, the club is not entitled to exemption under IRC Section 501(c)(7) of the Code. The revenue ruling defines a nontraditional business is any business (other than investments which produce income generally not includible in unrelated business taxable income under Section 512(b)) which, if conducted on a membership basis, would not further the club's exempt purposes.

Rev. Rul. 69-635, 1969-2 C.B. 125, describes an organization that was denied exemption under IRC Section 501(c)(7) because it was primarily formed to sell valuable services to the public for a fee. It did not provide its membership with opportunities to commingle with one another. Because the organization lacked significant

social activities it did not qualify for exemption under Section 501(c)(7). Most of the services offered were of a type generally available to motorists on a commercial basis. The rendition of such service was not in the nature of pleasure or recreation within the meaning of the statute.

Rev. Rul. 70-32, 1970-1 C.B. 132, describes a club open to all persons who were interested in flying. The members did not join to participate as a group in the hobby of flying for recreation, but to obtain economic flying facilities suitable for their individual business or personal use. The members had no expectation of personal relationship with the other members. The facts show that the club was operated primarily as a service to members rather than for the pleasure and recreation of the members. The organization did not qualify for exemption.

Revenue Procedure 71-17, 1971-1 C.B. 683, provides audit guidelines for determining the effect of gross receipts derived from nonmember use of a social club's facilities. Section 3.02 defines the term "total gross receipts" as receipts from normal and usual activities of the club. In this revenue procedure "normal and usual activities" of a social club encompass those social and recreational activities upon which the club's exemption is based.

#### **Application of law**

You do not meet the organizational and operational requirements of IRC Section 501(c)(7) and Treas. Reg. Sec. 1.501(c)(7). Although you are incorporated under the non-for-profit statute of your state, you are not organized for exempt purposes described in Section 501(c)(7). Your articles state you were formed to operate under your state's condominium act. Your activities include the management and operation of a boat condominium. You engage in the business of operating a boat condominium and offer related services to the unit owners/members. Public Law 94-568 maintains that organizations receiving more than an insubstantial of income from the active conduct of businesses not traditionally carried on by exempt social clubs are not entitled to exemption.

You do not have any exempt function income as described in IRC Section 512(a)(3)(B) of the Code. All your income derives from business activities which include maintenance fees, rentals, fuel sales and club house rentals. Therefore, your income is not defined as exempt function income. Furthermore, your total gross receipts cannot be described receipts from normal and usual activities of a club as described in Rev. Proc. 71-17.

An organization that engages in business with the public is not organized and operated exclusively for pleasure, recreation and other nonprofitable purposes and is not exempt under IRC Section 501(a) per Treas. Reg. 1.501(c)(7)-1(b).

You are like the organization described in Rev. Rul. 58-589. Your organizing documents and activities confirm you were formed for business activities although formed as a not-for-profit corporation. Your business activities which include boat storage and retrieval, boat maintenance, rentals and fuel sales activities are not incidental, trivial, or nonrecurrent; they are more than substantial and are reoccurring, and ongoing. In the absence of social exempt activities, you fail to meet the requirement that your members engage in personal contact, fellowship and commingling among themselves for social and recreational purposes. Therefore, you do not qualify for exemption under IRC Section 501(c)(7).

You are like the organization described in Rev. Rul. 68-168. Your business activities are nontraditional activities of a social club. You do not engage in activities for the pleasure and recreation of your members within the meaning of IRC Section 501(c)(7), nor do you provide activities which promote commingling among your members. Like the organization in Rev. Rul. 68-168 your income is primarily derived from your member assessments relating to the marina services you provide. This revenue is not raised from the members' use of

your recreational facilities but rather for services you render to unit owners for their personal use and access to their boats. Your business activities are not incidental nor do they further an exempt purpose described in IRC Section 501(c)(7).

You are like the organizations described in Rev. Rul. 68-535 because you engage in a substantial amount of nontraditional business activities and lack the characteristics of an exempt social club described in IRC Section 501(c)(7).

You are like the organization described in Rev. Rul. 69-635. You provide services to the unit owners within the boat condominium; this accounts for % of your total gross income. The fuel sales and clubhouse rentals to members and the public account for the remaining %. You engage in business activities typical of those offered at a marina. Other related services include dry storage, slipways, and cranes for getting boats in and out of the water. You do not engage exclusively in social activities for the pleasure and recreation of your members as intended by IRC Section 501(c)(7).

You are like the organization described in Rev. Rul. 70-32. You were formed to provide services to your members whose only connection is their ownership of boat condominiums within the same facility. These business activities are nontraditional activities. An organization with more than an insubstantial number of nontraditional activities will not qualify for exemption under IRC Section 501(c)(7).

#### **Taxpayer's Position**

You submitted addition information in support of your claim to exempt status under IRC Section 501(c)(7). You provided copies of the X Not-for-Profit Corporation Reports for your first-year filing and for the most recent year filing in support of your claim that you have operated as a not-for-profit entity since your inception. You point to your Articles of Incorporation and Bylaws as proof that you are a not-for-profit corporation. You explained that the condominium developer's accountant incorrectly filed Forms 1120 instead of Form 990 and subsequently Forms 1120 were mistakenly filed.

You additionally claim that your nonmember income resulting from rental revenue, outside rack rental, clubhouse use, service income and fuel sales (net income) only represents % percent of your income and are therefore within the % limitation for nonmember income.

#### **Government's Position**

We do not disagree that you are incorporated as a not-for-profit corporation. However, the fact that you are formed as a not-for-profit corporation does not guarantee recognition of exemption from federal income tax. To qualify for exemption from federal income, you must meet the requirements for exemption as described in IRC Section 501(c)(7). The fact that you are a nonprofit corporation does not entitle you to automatic exemption from federal income tax. As a not-for-profit corporation you must provide proof that you meet the requirements for exemption. Because you are have not provided proof of your qualification of exempt status, we propose to deny your application for exempt status under IRC Section 501(c)(7).

Your actual nonmember income for is % when gross income from fuel sales to nonmembers is properly included in the percentage computation. Therefore, you also fail to meet the IR 501(c)(7) income limitation because you receive more than 15% in nonmember income.

#### **Conclusion**

You do not meet the requirements for exemption under IRC Section 501(c)(7). You are not organized and operated for exempt purposes within the meaning of IRC Section 501(c)(7). You failed to demonstrate that you



substantially engage in social or recreational activities for the pleasure and recreation of your members within the meaning of the Code. You failed to show that members comingle. You anticipate receiving more than an insubstantial amount of nontraditional income from the business activities associated with the boat condominium. Those nontraditional business activities also include the sale of gasoline and dry rack rentals. You principally engage in on-going business activities. Therefore, you do not qualify for exemption pleasure, recreation, or other nonprofitable purposes within the meaning of IRC 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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements