



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

Date:
January 20, 2022
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:
Name:
ID number:
Telephone:
Fax:

Number: 202244016
Release Date: 11/4/2022

UIL: 501.04-00

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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 _____, is revoked.

Our adverse determination as to your exempt status was made for the following reasons: You have not established that you are operated substantially for pleasure and recreation of members or other non-profitable purposes and no part of the earnings inures to the benefit of any private shareholder within the meaning of IRC Section 501(c)(7). You have made your recreational and social facilities available to the general public. You have exceeded the non-member income test for tax years ending _____ and _____.

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.

Letter 6337 (12-2020)
Catalog Number 74808E

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:

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:
07/08/2021
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

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,

Sean E. O'Reilly
Director, Exempt Organizations Examinations

Enclosures:
Form 886-A
Form 6018
Pub 892

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

ISSUE:

Whether _____ continues to qualify as an exempt social club under Section 501(c)(7) of the Internal Revenue Code.

FACTS:

A compliance examination for the year ended _____ for the return form _____ Short Form Return and Form _____, Exempt Organization Business Income Tax Return was conducted on _____ (hereafter the EO). The EO was organized on _____ an Amendment was made to paragraphs 4 and 7 of the of the organization's original Articles of Incorporation on _____. Paragraph 4 amended the address where the Secretary of State shall mail a copy of any process against the organization and Paragraph 7 was amended to include provisions required by the Internal Revenue Service if the EO applied for recognition of exemption under IRC Section 501(c)(7) of the Internal Revenue Code.

A form _____ application for exemption was filed on _____. The EO was issued a determination letter recognizing it as a social club exempt from federal income tax under Internal Revenue Code Section 501(c)(7) on _____.

The EO was formed to provide a social environment for persons from _____ of _____ through member participation. The main purpose of the EO is to promote unity amongst members and to help distressed people of the _____ living in the _____. The EO provides free tutoring to members children and hold cultural events and festivals to promote and flourish the _____ and culture such as an annual picnic, and _____ party during _____. The EO also helps to pay for the burial expense for deceased members whose family cannot afford to pay for the cost.

The EO is located on the second floor of a facility in which they pay rent in the amount of \$ _____ a month. They hold monthly meetings at the facility and use it for storing various items that the EO uses for its various fundraisers such as cups, utensils etc.

The EO advertises on their website that they are an association created for people from _____ of _____. Which follows core values “ _____, “ _____, “ _____”, in order to fulfill its mission to promote the wellbeing of the _____ in the _____.

Letter 3611 and Form 4564 Information Document Request was sent to the EO on _____ requesting an appointment for interview, to examine the books and records, activities of the EO and to examine Forms _____ and _____ for the tax year ended _____. There was no response from the EO until _____ when Revenue Agent (RA) received Form 2848, Power of Attorney and Declaration of Representative, for _____, CPA. The POA requested that be able to send the organizing documents and some of the financial records by mail or fax to get the examination started and _____ would then request the remainder of the records from the EO and _____.

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schedule an appointment. The appointment was rescheduled several times by _____ due to inability to secure complete records from the EO.

Bank statements were provided by the _____ by fax and stated that the EO will be sending additional information to explain how non-member income was calculated on Form _____ and _____, however there were never any documents provided to substantiate the amounts included in the calculation of nonmember income according to the record keeping rules outlined in Revenue Procedure 71-17, 1971-1 C.B. 683.

The EO reported investment income on its Form _____ return. The investment income reported is non-member rental income derived from renting a single-family home the EO owned in _____ during the year under exam. On _____ the Secretary of the EO _____ stated that the EO has since sold the property. The rental income has been reported on Form _____ Exempt Organization Business Income Tax Return.

The EO correctly filed form _____ and _____ for the tax periods ending _____ and _____. However, no returns were filed for subsequent year ending _____ and _____. For tax periods ending _____ and _____ they reported nonmember income on line 39b, Gross receipts included on line 9, for public use of club facilities.

During the initial interview on _____ the Secretary of the EO, _____, stated that the EO is open to the public and the income attributable to non-members for public use of club facilities is from _____, that took place on _____ at _____, which include guests from all over the world with various panel discussions on social responsibilities, young entrepreneurs, medical research and medical mission, cultural heritage and young leadership.

The following percentages reported for non-member income from public use of club facilities based on the Form(s) _____ and _____ filed by the organization:

A. Year/Period Ended	B. Gross Receipts	C. Public Use of club facilities	D. Rent Income	% of non-member income from public use of club facilities
	\$	\$	\$	%
	\$	\$	\$	%

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Based on conducting a -year analysis of gross receipts, it has been noted that the EO received % and % from non-member, during tax years ending and

The following percentages reported for gross receipts from non-member income are based on the Form(s) and filed by the organization:

A. Year/Period Ended	B. Gross Receipts	C. Investment Income	D. Public Use of club facilities	% of non-member income from gross receipts
	\$	\$	\$	%
	\$	\$	\$	%

LAW

Internal Revenue Code

IRC § 501(c)(7) exempts from federal income tax clubs organized for pleasure, recreation, and other non-profitable purposes, substantially all the activities of which are for such purposes and not part of the net earnings of which insures to the benefit of any private shareholder.

Section 1.501(c)(7) of the Regulations 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 general public, is not organized and operated exclusively for pleasure, recreation and other non-profitable purposes, and is not exempt under section 501(a).

IRC 512(a)(3) states that The Tax Reform Act of 1969 did not amend IRC Section 501(c)(7). However, enactment of IRC Section 512(a)(3) made clubs only quasi-exempt, because it made them subject to tax on their passive income. Because one of the central purposes of social clubs is to provide benefits such as access to social facilities for members, when such benefits are funded by members, exemption is justified on the theory that the members will be in the same position as if they had paid for the benefits directly. However, untaxed income, such as interest on investments, operates to subsidize the recreational facilities or activities for members. Thus, the exemption operates properly only if these passive sources of income are taxed to the organization as unrelated business taxable income.

IRC Section 512(a)(3)(B) exempts social clubs only to the extent of their "exempt function income," which is defined as the gross income from dues, fees, charges, and other income generated by club members pursuant to the organizations' non-profitable purposes. Income received from the general public or from investments is treated as unrelated business taxable income and is taxed at general

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corporate rates.

Public Law 94-568, 1976-2 C.B. 896, passed in 1976, enacted by Senate Report 94-1318, 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 does not represent more than 15 percent of total receipts that are derived from the use of a social club's facilities or services by the general public.

It was the enactment of P.L. 94-568 in 1976 which changed the term "exclusively" to "substantially all". This change, as incorporated in the IRC allows for an insubstantial amount of income from activities that do not further the club's exempt purposes. These activities which constitute an unrelated trade or business include the use of the club facilities by the general public.

Treasury Regulations

Treas. Reg. §1.501(c)(7)-1(a) further provides that 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.

Treas. Reg. Section 1.501(c)(7)-1(b) provides 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 nonprofitable purposes, and is not exempt under Code section 501(a).

Revenue Rulings

Rev. Rul. 58-589, 1958-2 C.B. 266, discusses the various criteria for recognition of exemption under section 501(c)(7) of the Code. In order to establish that a club is organized and operated for pleasure, recreation, and other nonprofitable purposes, "there must be an established membership of individuals, personal contacts and fellowship. A commingling of the members must play a material part in the life of the organization."

Rev. Rul. 60-324, 1960-2 C.B.173 provides that a social club that made its social facilities available to the general public through its members-sponsorship arrangement cannot be treated as being operated exclusively for pleasure, recreation, or other nonprofitable purposes and the club no longer qualified for exemption under 501(c)(7) of the code.

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Rev. Rul. 66-149, 1966-1 C.B.146 hold a social club as not exempt as an organization described in IRC 501(c)(7) where it derives a substantial part of its income from non-member sources.

Rev. Rul. 69-220, 1969-1 C.B. 154 describes 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 Code section 501(c)(7). The organization was precluded from exemption because it regularly engaged in a business ordinarily carried on for profit and because its net income from this activity inured to its membership in the form of improved and expanded facilities.

Revenue Procedure

Rev. Proc. 71-17, 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. It states that where a club makes its facilities available to the general public to a substantial degree, the club is not operated exclusively for pleasure, recreation, or other nonprofitable purposes. It also describes the record-keeping requirements for social clubs with respect to nonmember use of the club's facilities. If records are not maintained in accordance with the Revenue Procedure, all receipts may be classified as nonmember income.

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.
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 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.

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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.

The term "general public," as used in that Revenue Procedure, means persons other than members of a club, their dependents, or guests. A guest of a nonprofit social club defined in Revenue Ruling 79-145, is an individual who is a guest of a member of the club and who ordinarily does not reimburse the member for the guest's expenses. On the other hand, amounts paid to a social club by visiting members of another social club are amounts paid by nonmembers, even though both clubs are of like nature and the amounts paid are for goods, facilities, or services provided by such social club under a reciprocal arrangement with such other social club. Accordingly, in this case, the members of the other social clubs that attend the are not guests of the members of the host club but are members of the general public within the meaning of Rev. Proc. 71-17.

Rev. Proc. 71-17 also provides that a significant factor reflecting the existence of a nonexempt purpose is the amount of gross receipts derived from use of club facilities by the general public. It provides that gross receipts in excess of \$ and which make up more than % of total gross receipts will demonstrate a nonexempt purpose.

Court Cases

United States vs. Fort Worth Club of Fort Worth, Texas, 345 F. 2d. 52 (1965), described an organization which operated a men's club in a 13-story downtown building, title to which was held by its wholly-owned subsidiary. Half of the space was occupied by the club and the other half was rented to tenants by the subsidiary which turned the net income over to the club. It held that the club was not exempt because it derived substantial and recurring profit from a business altogether unrelated to its activities as a social club.

Polish American club, Inc. vs. Commissioner, 33 T.C.M. (CCH) 925 (1974) T.C. Memo. 1974-207 held that the statutes and regulations require that exempt social clubs be organized and operated exclusively for pleasure, recreation and other nonprofitable purposes. The case law has modified this requirement by allowing social clubs to qualify for exemption under section 501(c)(7) when its outside profits were: (1) strictly incidental to club activities, not as a result of an outside business; and (2) either negligible or nonrecurring. However, when the outside income is both substantial and recurring, the statutory requirements are not satisfied, and the social club is not exempt from tax.

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Pittsburgh Press Club v. U.S., 536 F.2d 572 (1976); 579 F.2d 751 (1978); and 615 F.2d 600 (1980), the court found that a substantial portion of the club's total gross receipts was from nonmember use of club facilities (determined to be between 11-17% of gross income). This indicated to the court that the club was engaged in business with the general public. Other factors noted by the court to consider in addition to the level of nonmember income include the purposes for which the club's facilities were made available to nonmember groups, the frequency of use of the club facilities by nonmembers, and the amount of net profits derived from the nonmember income.

TAXPAYER'S POSITION

Taxpayer's position has not been provided.

GOVERNMENT'S POSITION

An organization exempt from federal income taxes as described in IRC section 501(c)(7) must meet the gross receipts test in order to maintain its exemption. In order to meet the gross receipts test, an organization can receive up to 35% of its gross receipts, including investment income, from sources outside its membership without losing its tax-exempt status. 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 nonmembers.

Based on the examination, the organization does not qualify for exemption as a social club describes in IRC 501(c)(7) and Treas. Reg. 1.501.(c)(7) which provides that in general, this exemption extends to social and recreation clubs which are supported solely by membership fees, dues and assessments.

Rev. Rul. 66-149 and 60-324 supports this position stating that a social club that opens to the public and derives substantial part of its income from non-member sources is not exempt as an organization describes in 501(c)(7).

In this case, the EO has far exceeded the % gross receipts standard for nonmember income for the examination year. A review of the prior year indicated that the organization far exceeded the % gross receipt test for nonmember income. For the year under examination the organization permits unrestricted use of its facilities by the public which exceed the % limit of public use of the club's facilities.

It was also noted that the EO's residential rental activity is conducted on a regular basis and is not a normal activity of a section 501(c)(7) organization that would further social or recreational purposes. It is clear that the EO's rental activity is a recurring activity, not incidental and its rental income combined with sources outside of its membership exceeded % of its gross receipts.

In U.S. v. Fort Worth Club of Fort Worth, Texas, although the rental activity described was relating to leasing of building to commercial tenants, the Court made it clear that for a social club, there is

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no basis in the statute or its history for treating unrelated rental income of social clubs differently from any other unrelated club income. The rental activity of the EO is similar to that of the organization in the Court case and exemption should be revoked because it is recurring and not incidental.

Based on the large percentages of gross nonmember income to total gross receipts of the EO, (i.e., as noted in the above table), which exceeded the limitation of 15% as set forth by IRC 501(c)(7) for each of these years, it is the Government's position that the EO is no longer operated exclusively for the pleasure and recreation of its members and is not exempt under section 501(c)(7).

CONCLUSION

The IRC Section 501(c)(7) tax exempt status of _____ should be revoked since income received by the club (rental and non-member) exceed _____ % of its gross receipts, including investment income, from sources outside its membership.

Accordingly, _____ is not entitled to tax exemption under 501(c)(7) of the Code and its tax-exempt status should be revoked, effective Form _____, *U.S. Corporation Income Tax*, should be filed for tax year ending _____ and thereafter.

You have the right to file a protest if you disagree with this determination. To protest, you must submit a statement of your position and fully explain your reasoning within 30 days from the date of this letter. Details of filing a protest can be found in the enclosed publications. We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to Appeals Office.

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