

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:TEGE:EOEG:E02:RBWeinstock
PRENO-127085-04

UILC: 277.00-00

date: June 24, 2004

to: Manager, EO Technical Guidance & Quality Assurance
(Tax Exempt & Government Entities) SE:T:EO:RA:G

from: Senior Counsel, Exempt Organizations Branch 2
(Tax Exempt & Government Entities)



subject: [REDACTED] Technical Advice Request

This memorandum responds to your request for assistance dated May 13, 2004 regarding the above captioned technical advice.

ISSUE

Whether the taxpayer is a non-exempt social club that is a taxable membership organization within the meaning of section 277 of the Internal Revenue Code.

CONCLUSION

Unless the taxpayer qualifies and specifically elects to be treated as an exempt homeowners association under section 528, it will be a taxable membership organization within the meaning of section 277.

FACTS

Your have forwarded a technical advice request to our office for consideration of the above issue. The taxpayer in this case was recognized as a tax-exempt social club under section 501(c)(7). The Service examined the taxpayer and the examiner submitted a request for technical advice [REDACTED]

[REDACTED] does section 277 apply in determining the taxpayer's tax liability.

LAW AND ANALYSIS

Section 277(a) provides that in the case of a non-exempt membership organization that operates primarily to furnish services or goods to members, deductions for the taxable year attributable to furnishing services, insurance, goods, or other items of value to members shall be allowed only to the extent of income derived during such year from members or transactions with members. If such deductions exceed such income, the excess shall be treated as a deduction attributable to furnishing services, insurance, goods, or other items of value to members paid or incurred in the succeeding taxable year.

Section 528 provides that a homeowners association shall be subject to tax only on its non-exempt function income and shall be considered a tax-exempt organization for the purpose of any law that refers to organizations exempt from tax. An organization must elect to have section 528 apply to it. The election is made by the filing of a properly completed Form 1120-H by the time, including extensions, for filing an income tax return for the year in which the election is to apply. This election is made each year. Treas. Reg. § 1.528-8.



The determination of whether the taxpayer is a taxable membership organization within the meaning of section 277 is a factual one. According to the administrative file, the taxpayer is a membership organization; its activities primarily involve providing goods and services to its members, and when revoked, will not be exempt from taxation under section 501(c)(7).¹ Armour-Dial Men's Club, Inc. v. Commissioner 77 T.C. 1, aff'd, 708 F.2d 1287 (7th Cir. 1983). Based on these facts, we believe section 277 applies to the taxpayer.

We are returning your administrative file. Please call Ronald Weinstock at (202) 622- if you have any further questions.

Attachment (1)

¹ Nor will it be exempt under section 528 unless it qualifies and also elects to be treated as exempt under section 528.