

INTERNAL REVENUE SERVICE

Department of the Treasury

Date:

FEB 7 6 10 PM '81

Key District:

[REDACTED]

Year(s):

[REDACTED]

Person to Contact:

[REDACTED]

Contact Telephone Number:

[REDACTED]

Dear Sir or Madam:

We considered your appeal of the adverse action proposed by your key District Director. The paragraph(s) checked below indicate(s) our decision.

- ☒ Your exemption from Federal income tax under section 501(c)(7) of the Internal Revenue Code is:
- ☐ confirmed.
- ☐ modified. A new determination letter is enclosed.
- ☒ denied or ☐ revoked. You are required to file Federal income tax return(s) on Form(s) 1120 for the above year(s). You should file these returns with your key District Director, EP/EO Division, within 30 days from the date of this letter, unless a request for extension of time is granted.
- ☐ You are not a private foundation because you are described in Code section(s) _____.
- ☐ You are an operating foundation as described in code section 4942(j)(3).
- ☐ You have no liability for excise taxes under IRC _____ for the above year(s).
- ☐ Your liability for excise taxes under IRC _____ for the above year(s) was properly reported on your return(s).
- ☐ There is no change to your unrelated business income tax liability as reported for the above year(s).
- ☐ Your Form(s) 990-T for the above years are accepted as filed.

You may direct questions about the decision to the Appeals Officer whose name and telephone number are shown above.

Sincerely yours,

[REDACTED]

Associate Chief, Appeals

Letter 1370

SEP 29 1994

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(7) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted indicates you were incorporated in [REDACTED] on [REDACTED] to maintain a club for social enjoyment, to study and practice vocal and instrumental music, and to aid and encourage alien members in their preparation for American citizenship.

Your Bylaws state that you were founded for the purpose of promoting the acquisition of American Citizenship at the request of its members, for the welfare and defense of the rights of the [REDACTED] people before the American authorities with which the Club shall always collaborate for the fulfillment of the national laws, and for maintaining proper customs and a proper public life among its members; to encourage its members to be loyal American citizens, worthy of their native land, to honor and increase the glory of its name and the greatness and esteem of the [REDACTED] race; to live in harmony with reciprocal respect and love for the common good; to overcome envious competition, and to be in name and in fact worthy [REDACTED]; to acquire greater activity in the social life of its members, and encourage love of music, so that a school of song and music may have life in the bosom of the Club.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	[REDACTED]	[REDACTED]	[REDACTED]				
Name	[REDACTED]	[REDACTED]	[REDACTED]				
Date	9/25/94	9/23/94	9/29/94				

[REDACTED]

The Bylaws also state that you have four classes of members:

- a. Regular - who are persons of [REDACTED] birth or descent.
- b. Social - anyone over the age of 21 who may or may not be of [REDACTED] birth or descent unless they are over 60 year old.
- c. Lady - ladies over the age of 21, of [REDACTED] descent or ladies whose husbands are of [REDACTED] birth or descent.
- d. Residence - persons who must live within a radius of thirty-five miles of the Club room.

In operation, you stated that you actually have two classes of members, regular and social. Membership dues are \$[REDACTED] and \$[REDACTED] respectively.

Your application for exemption states that: "The activities and operations of the Club involve social enjoyment, the study and practice of vocal and instrumental music, and aiding and encouraging alien members in their preparation for American Citizenship. A few weeks during the year, the Club provides lessons for members to learn the English and [REDACTED] language. The Club's social activities include: a place for members to socialize the celebration of [REDACTED] holidays like the [REDACTED] celebration (the commemoration of an [REDACTED]), the sponsorship of softball, bowling and other teams, and providing a meeting place for various local organizations, for example, the [REDACTED]."

In your letter dated [REDACTED], you stated that your social activities include annual Christmas parties, participation (sponsorship) in the annual [REDACTED] celebration (commemoration of an [REDACTED]), sponsorship of softball, bowling, and flag football teams, sponsorship of the [REDACTED], sponsorship of local organization ([REDACTED]), by providing a meeting place, and providing facilities for political discussions (among candidates for office).

The income is derived from sales of liquor, beer and food, dues from members, rents, interest income and raffles.

Expenditures are for purchases of food, liquor and beer, benefits to members, advertising and operational expenses.

You also have an expenditure for the salaries and wages of your bartenders.

Section 501(c)(7) of the Internal Revenue Code provides for exemption 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.

Section 1.501(c)(7) of the Income Tax Regulations provides as follows:

a) The exemption provided by section 501(a) for organizations described in section 501(c)(7) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part of its net earnings inures 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 revenues from members through the use of club facilities or in connection with club activities.

b) A club which engages in business, such as making its social and recreational facilities available to the general public - is not organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, and is not exempt under section 501(a). 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 purposes.

Public Law 94-568 as explained in Senate Report No. 94-1318, published in Cumulative Bulletin 1976-2, page 597, provides that a club exempt from taxation and described in section 501(c)(7), is permitted to receive up to 35 percent of its gross receipts from a combination of investment income and receipts from nonmember use of its facilities or services, so long as the latter does not represent more than 15 percent of the total receipts. It is further stated that if an organization exceeds these limits, all of the facts and circumstances must be considered in determining whether the organization qualifies for exempt status.

Revenue Procedure 71-17, published in Cumulative Bulletin 1971-1, page 683, establishes recordkeeping requirements for social clubs, to separate nonmember income. If these requirements are met, certain presumptions as to member vs. nonmember income may be made, as outlined in the Revenue Procedure.

Revenue Ruling 58-589, published in Cumulative Bulletin 1958-2, on page 266, holds that a club will not be denied exemption merely because it receives income from the general public; that is, persons other than members and their bonafide guests, or because the general public on occasion is permitted to participate in its affairs, provided such participation is incidental to or in furtherance of its general club purposes and it may not be said that income therefore is inuring to members. This is generally true when the receipts from nonmembers are not more than enough to pay their share of the expenses.

Revenue Ruling 61-63, published in Cumulative Bulletin 1961-1, on page 240, holds that a nonprofit organization which, in conducting sports car events for the pleasure and recreation of its members, permits the general public to attend such event for a fee on a recurring basis and sell its patronage by advertising, does not qualify for exemption as a club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes under section 501(c)(7) of the Internal Revenue Code.

In this case, it was held that the solicitation of public patronage of its activities was prima facie evidence that the club was engaged in business and was not being operated exclusively for pleasure, recreation or social purposes. The income derived from public patronage inured to the benefit of the members. The club was therefore not qualified for exemption.

Revenue Ruling 66-225, published in Cumulative Bulletin 1966-2, page 227, holds that a nonprofit organization formed and incorporated by the owner of a corporation which operated a motel and restaurant did not qualify for exemption because it was controlled by a taxable corporation and operated as an integral part of such corporation's business.

Revenue Ruling 68-119, published in Cumulative Bulletin 1968-1, page 268, holds that a club will not necessarily lose its exempt status if it receives income from other than bonafide members and their guests or if the general public is permitted to participate in its affairs, provided such participation is incidental to and in furtherance of its general club purposes and the income therefrom does not inure to members. The equestrian club considered in this ruling held an annual steeplechase which was open to the general public. Prize money was paid from entry fees paid by participants, and general expenses of the meet were paid from admissions and sale of programs and refreshments. The club distributed any net proceeds from the meet to charity. Therefore, it was held the meet was not operated to make a profit and the income from nonmembers did not inure to the benefit of members. The club's exemption was not jeopardized by nonmember participation in its annual meet.

[REDACTED]

Further, in liberalizing the amount of nonmember income that could be received by social clubs, Congressional Committee Reports state that the amendment (Public Law 94-568) was not intended to permit social clubs to receive, even within the allowable guidelines for outside income, income from the active conduct of business not traditionally carried on by social clubs. (Senate Report No. 94-1318 2d Session, 1976-2 C.B. 596).

Code section 501(c)(7) requires that a club be organized and operated for pleasure, recreation and other nonprofitable purposes. The use of your facility for political discussions among candidates for offices is outside of the purview of "pleasure, recreation and other nonprofitable purposes."

You state that the club has two classes of members, regular and social. A social member can be anyone over the age of 21 who may or may not be of [REDACTED] birth or descent unless they are over 60 years old. Membership dues for those individuals are \$[REDACTED] annually.

Social members, in your organization, can not attend meetings or vote and their only privilege is the right to "enjoy the privileges of the social rooms." Forty percent of your membership is comprised of social members.

The term "club" presupposes the existence of a "common objective" among members. In your situation, the "common objective" is not evident because the restrictive class of members known as "social members" is merely a subterfuge for doing business with the general public.

Therefore, the income generated from the sale of liquor and/or beer to your "social members" is nonmember income.

You have failed to meet the requirements of Revenue Procedure 71-17 because you do not have records to substantiate your claim that bar and food sales are restricted to members.

You are comparable to Revenue Ruling 65-63, because you advertise to solicit patronage for the dining room and bar. The income derived from the public patronage, inures to the benefit of the member and is prohibited under Internal Revenue Code 501(c)(7).

Also, evidence in your application indicates that you have paid death benefits to the Ladies Auxillary. Providing death benefits is not an activity permitted in this section of the Code.

[REDACTED]

You do not meet the exceptions of Revenue Rulings 58-589 and 68-119 because your bar sales, raffles and rental of the facility is on a recurring basis. In addition, the net proceeds from these activities are used to offset your operational expenses.

Although your facility is not controlled by a taxable corporation, Revenue Ruling 66-225, the rationale is the same, the income from your bar sales, generated approximately [REDACTED] percent of your total revenue within a [REDACTED] year period, which is your primary activity. We have determined that your club is a business and excludes you from exemption.

On the basis of the evidence presented, we have concluded that your "broad" membership requirements; low membership dues and excessive bar sales is prima facie evidence that you are a "club as a business" and do not qualify for exemption from Federal income tax under section 501(c)(7).

In accordance with this determination, you are required to file Federal income tax returns on Form 1120.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter.

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]
District Director

Enclosure: Publication 892