



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201028042**
Release Date: 7/16/2010

Date: 4/21/2010

UIL: 501.06-01
501.07-06
501.09-03

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120

Tax Years:
All

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(7). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions.

If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

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

If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 3/3/2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

A = a state
B = a date
C = a country
E = a dollar amount

UIL:

501.06-01
501.07-06
501.09-03

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(7). The basis for our conclusion is set forth below.

Issues

1. Do you fail to qualify for recognition of exemption under section 501(c)(7) of the Code because your earnings inure to the benefit of your members? Yes, for the reasons described below.
2. Do you fail to qualify for recognition of exemption under section 501(c)(7) of the Code because a substantial part of your activities are not in furtherance of pleasure, recreation and similar non-profit purposes? Yes, for the reasons described below.

Facts

You previously applied for exemption under section 501(c)(3) of the Code on a Form 1023. However, you withdrew your application under section 501(c)(3) to pursue exemption under section 501(c)(7) of the Code on a Form 1024.

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

You were incorporated under the laws of the State of A on date B.

Your Articles of Incorporation provide that your purposes are exclusively charitable, religious, educational, and scientific.

Your Articles of Incorporation further indicate the following limitations:

- a. You will specifically provide financial support to your registered and active members in situations of medical emergencies and emergency assistance in case of death of a member, spouse or children and a member's siblings and parents. In case of death, disbursed funds will be used to pay for funeral arrangements in the USA or in the country of C.
- b. You will provide emergency assistance to active registered members, their immediate families and in special circumstances to non-members. The amount of funds disbursed to affected individuals will be decided by your Board of Directors/Executives and will be based on the agreed upon categories of assistance as voted and ratified by your members.
- c. Contributions from registered members will be your main source of revenue.
- d. You will also accept donations from the public and other organizations.

Your Bylaws provide that you exist for the following purposes:

- a. To promote activities considered to be beneficial to your members,
- b. To foster cultural, social and national identity and
- c. To provide the necessary network that can nurture economic growth for your members

You are a membership organization and each member is entitled to one vote at all organizational meetings for any business transacted. An informal membership application process is open to people interested in the culture of the country of C.

You submitted Form 1024, Application for Recognition of Exemption for section 501(c)(7) of the Code. Your application indicates that you exist for the purpose of assisting members in times of hardships and emergencies. In order to fulfill this purpose, you pay for the funeral expenses for any active members who have suffered a death in their family. To determine eligibility to receive financial assistance for funeral expenses, you verify that the member is registered, active, has submitted a copy of the death and mortuary certificates, and has submitted a letter from the hospital administrators along with other supporting documents. Upon board review and approval, you distribute approximately E dollars to the active member or beneficiary requesting the distribution, via a wire transfer.

According to your application, you conduct four general meetings per year at various members' houses. Members discuss current events, socialize, exchange ideas, have debates, and eat the cuisine of the country of C at these meetings. During each meeting, your members evaluate your financial status and set upper and lower limits of financial assistance for your distributions. In addition to these four general meetings, one cultural event is held annually and is open to the

general public for the purpose of promoting the culture of the country of C.

Other statements in your application confirm that you were formed for the primary objective of fulfilling the need of your members to assist themselves in times of hardship, especially for funeral expenses either in the USA or in the country of C.

Aside from member donations, your fundraising activities consist of carwashes, sweeping football stadiums and installing seat cushions at football games. These fundraising activities are conducted one weekend per month in the summer and alternate weekends for home games during the annual football season. Your gross receipts from these types of fundraisers for 2007 and 2008 were approximately \$1,500 for each year.

Page 5 of your Form 1024 showed that, from your inception through 3/31/2009, disbursements to or for the benefit of your members constituted 75% of your total expenses. You also stated that most of your disbursements have gone to pay for funeral expenses, and that most of the funerals that you helped pay for were for parents, spouses or children of your members.

The information in your Form 1024 indicates that you do not operate under a system of lodges.

Law

Section 501(c)(7) of the Code, as amended by Public Law 94-568, provides for the exemption from Federal income tax of, "Clubs organized for pleasure, recreation, and other non-profitable 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."

Revenue Ruling 58-589, 1958-2 CB 266 set forth the criteria or tests for determining whether an organization qualifies for exemption from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as an organization described in section 501(c)(7) of the Code. The ruling stated that an organization must establish that it is a club both organized and operated for pleasure, recreation, and other non-profitable purposes and that no part of its net earnings may inure to the benefit of any private shareholder or individual. To meet the first requirement, 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.

Revenue Ruling 69-635 1, 1969-2 CB 126 held that an automobile club whose principal activity was rendering automobile services to its members but which had no significant social activities did not qualify for exemption under section 501(c)(7). The rendition of automobile services was not in the nature of pleasure and recreation within the meaning of section 501(c)(7). Furthermore, commingling of members did not play a material part in the activities of the organization. Accordingly, the organization was denied exemption under section 501(c)(7).

Revenue Ruling 55-716, 1955-2 CB 263 held that an organization formed to furnish television antenna service to its members upon payment of a stipulated membership fee and a monthly charge for maintenance of the antenna was not tax exempt under section 501(c)(7). The ruling

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stated that the term "club" contemplates a commingling of members and personal contacts and fellowship must play a material part in the life of an organization in order for it to come within the meaning of the term "club." Accordingly, the organization was denied exemption under section 501(c)(7).

Revenue Ruling 63-190, 1963-2 C.B. 212 held that a nonprofit organization (not operated under a system of lodges) which maintained a social club for members and which also provided sick and death benefits for members and their beneficiaries, did not qualify for exemption from Federal income tax either as a social club under section 501(c)(7), a civic league under section 501(c)(4), or a fraternal beneficiary society under section 501(c)(8) of the Internal Revenue Code of 1954.

In Chattanooga Automobile Club v. Commissioner, Warren Automobile Club, Inc. v. Commissioner, 182 F. 2d 551 (6th Cir. 1950), the United States Court of Appeals 6th Circuit held that to be exempt under the Act of Congress, a club must have been organized and operated for pleasure, recreation, and other non-profitable purposes. The court further specified that the words "other non-profitable purposes" must be construed as coming within the same classification as pleasure and recreation. In addition, there must be at least some sort of commingling of members to constitute a club. The court held that the two automobile clubs petitioning the court were not exempt under section 101(9) of the Internal Revenue Code of 1939 as a social club because the members of these clubs did not commingle. Section 101(9) of the 1939 Code was the precursor to section 501(c)(7) of the 1954 Code.

In Keystone Automobile Club v. Commissioner, 181 F. 2d 402 (3rd Cir. 1950), the United States Court of Appeals 3rd Circuit defined the word "club" to include some type of mingling of people together as well as a common object. In this case, the court held that the Keystone Automobile Club was not exempt under section 101(9) of the Code for a number of reasons one of which was because they saw no evidence of the commingling of members.

Application of Tax Law

Our analysis of the Internal Revenue Code indicates that, to achieve exemption under Section 501(c)(7), an organization's earnings must not inure to the benefit of its members and that substantially all of an organization's activities must be for pleasure, recreation and similar purposes. However, based on our analysis of the facts in your case, the distributions to your members constitute prohibited inurement and a substantial part of your activities are for the economic advancement of your members rather than for pleasure, recreation and similar purposes. Therefore, the Code itself indicates that your application for recognition of exemption under section 501(c)(7) should be denied.

Revenue Ruling 58-589 states that 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. You have indicated that you conduct four general meetings per year substantially for the purpose of discussing your fundraising activities and financial assistance distributions. You have further indicated that you have an informal membership process where

any member of the general public could join your organization and that social activities will play a relatively minor role within your organization in comparison to earning, planning and making the distributions to financially benefit your members. Based on the information you submitted, the social commingling amongst your members is insufficient to offset your non-qualifying activity of providing economic aid to your members. Therefore, this ruling supports the denial of your application for recognition of exemption under section 501(c)(7).

Like the organizations in Chattanooga Automobile Club v. Commissioner, Warren Automobile Club, Inc. v. Commissioner and Keystone Automobile Club v. Commissioner, a substantial part of your activities is providing your members with valuable non-social services that are not in furtherance of pleasure, recreation and similar non-profit purposes. Your sponsorship of relatively insubstantial social activities for members at quarterly meetings is insufficient to offset your non-qualifying activity of providing economic aid to your members. Therefore, these court cases support the denial of your application for recognition of exemption under section 501(c)(7).

Similar to the organizations described in Revenue Rulings 69-635 and 55-716, you were formed and are operated largely for the purpose of providing valuable non-social services to your members. These rulings also support the denial of your application for recognition of exemption because both rulings emphasize that providing members with valuable non-social services disqualifies an organization under section 501(c)(7).

Revenue Ruling 63-190, 1963-2 C.B. 212 stated that a nonprofit organization (not operated under a system of lodges) which maintained a social club for members and provided sick and death benefits to its members and their beneficiaries, did not qualify for exemption from Federal income tax either as a social club under section 501(c)(7), a civic league under section 501(c)(4), or a fraternal beneficiary society under section 501(c)(8) of the Internal Revenue Code of 1954. Because you also provide death benefits to your members, this ruling confirms that you do not qualify for recognition of exemption under section 501(c)(7).

Conclusions

As to Issue 1 on page 1 of this letter, we concluded that your earnings inure to the benefit of your members and this alone constitutes sufficient justification to deny your application for recognition of exemption under section 501(c)(7), regardless of the outcome of Issue 2.

As to issue 2 on page 1 of this letter, we concluded that a substantial part of your activities are not in furtherance of pleasure, recreation and other similar non-profit purposes and this alone constitutes sufficient justification to deny your application for recognition of exemption under section 501(c)(7), regardless of the outcome of Issue 1.

If you do not intend to protest this determination, you do not need to take any further action.

If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning as why you disagree with our conclusions on both Issue 1 and Issue 2. To protest, you must submit the protest statement, signed by one of your officers under the penalties of perjury, within 30 days from the date of this letter.

If you decide to protest, we will consider your protest statement and decide if that information affects our determination. If your statement does not provide a basis for us to reconsider the determination at our level, we will forward your case to the independent IRS Appeals Office. You can find more information about the role of the Appeals Office in the enclosed Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service (IRS) may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you submit a protest, please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

If you mail a protest to us, please mark the envelop to the attention of the IRS contact person shown on page one of this letter. You may also fax a protest to us using the fax number shown on page one of this letter. If you fax a protest, please call the IRS contact person shown on page one of this letter to confirm that he received your fax.

This supersedes our letter of 1/5/2010, because that letter was sent to the incorrect address that you listed on page 1 of your Form 1024, Application for Recognition of Exemption under Section 501(a).

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements