

Release Number: 200748022
Release Date: 11/30/07
Date: April 6, 2007

Department of the Treasury
Internal Revenue Service

LEGEND:

ORG = Name Of Organization

NUM = EIN Number

Date1 = Effective Date

UIL: 501.03-01

ORG

Person to Contact:

Identification Number:

Contact Telephone Number:

In Reply Refer to: TE/GE Review Staff

EIN NUM

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: _____

Dear :

This is a Final Adverse Determination Letter as to the ORG's exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

- 1) You are not operated for an exclusive exempt purpose as required by I.R.C. section 501(C)(3).
- 2) You are not operated for an exclusive public purpose, as required by I.R.C. section 501(c) (3), but are operated for a substantial private purpose.

Based upon these reasons, we are retroactively revoking your IRC section 501(c)(3) tax exempt status to Date1.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers.

You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by writing to: Internal Revenue Service, Taxpayer Advocates Office, Local Office.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

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

Sincerely yours,

Marsha A. Ramirez
Director, EO Examinations

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG.		Year/Period Ended

LEGEND:

Date1= Effective Date

Club = Owner of Org's Facilities

State = Name of State

ISSUE:

Can the organization retain tax exemption under code section 501(c)(3) even though the organization's primary activities benefit the members and has no charitable or educational activities and very minimal public access to their facility and activities?

FACTS:

The organization received their tax exemption under 501(c) (3) as part of a group ruling. The organization is part of Group Exemption Number . The organization has 240 members and 36 acres of land with most of the land comprise of a lake in the center of the property. The entire property is surrounded by a 6 foot chain fence. In order to enter the facility you have to be buzzed in. The organization operates a bar, hall, and video poker machines and has offices in the facility. In one of the organization's response for request for information, the organization indicated the “

. It was originated around to develop opportunities for the enjoyment of the great outdoors as an essential part of the character building and the spiritual and the physical development of our people: To encourage the protection and the restoration of woods, wild flowers and wild life. To safeguard the public health resources, to discourage unwise drainage, and to promote measures for the prevention and control of floods. In order to accomplish all of the above, the ORG conducts many functions, some of which are shown in the following list of events which are open to members of the club, their families, and invited guest.

- | | |
|-----------------------------|------------------------------|
| 1. New Year's party | 14. Conservation Meetings |
| 2. Smoker One or 2 per year | 15. Boy Scout Outing |
| 3. Super Bowl Party | 16. State Convention |
| 4. St. Patricks Party | 17. National Convention |
| 5. Stock Car Race Party (2) | 18. Members Only Picnic |
| 6. Steak Fry Dinner | 19. Night at The Races Party |
| 7. Shrimp Boil Dinner Dance | 20. Country & Western Dance |
| 8. Family Picnic | 21. Bingo Night Party |
| 9. End of Summer Picnic | 22. Easter Egg Hunt |

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ORG.		

- | | |
|------------------------------|-------------------------------|
| 10. Turkey Shoot Dinner | 23. Corn Boil Party |
| 11. Christmas Party for Kids | 24. Flower Show & Raffle |
| 12. Handy Camp Outing | 25. Spring Work Party Cleanup |
| 13. Beach Party | 26. Fall Work Party Cleanup |

The organization rents out their hall to members only. The use of the bar is also restricted to members and their invited guests with the entire income (less expenses) credited to and used by the treasurer and board of directors for operation and maintenance of the club's facilities.

The organization indicated in their response that their fundraising activities are used for operation and maintenance of the facilities. Pull tabs are sold at some of these functions

mandated by Section _____ of the State Administrative Code pursuant to Section _____ " as ().

In addition you stated that income is derived from the shrimp boil and the wildlife drawing. Wildlife raffle tickets are sold by and mostly to your membership once a year with drawings held weekly.

A Lake Survey dated October was conducted by an individual who is the senior chemist from the State Aquarium. The lake surveys are made available to all members of the ORG and any other attendees at their monthly meeting held the second Tuesday of every month. The surveys are used to develop the strategy for the environmental program aimed at maintaining the lake in healthy condition. The lake surveys allow this organization to do a variety of things, including determining the quality of the lake water and determining both which type of fish should be set up to inhabit the lake and how to best maintain the existing lake fish stock. The lake surveys are also used to determine which types of aquatic plants exist in the lake. This information is then used to formulate plans as to which aquatic plants will be supported and which aquatic plants we attempt to eliminate. The aquatic plants are an integral part of supporting the fish. In addition to the above the lake surveys are used to determine what type of fish habitat shall be allowed to exist or be established in the lake. The organization indicated it goes to great expense to maintain the land in a natural state without being made available for residential or commercial development. The maintenance of the related lake, a lake which is classified as a high quality wet land. The maintenance of this lake also involves the protection of the fish and aquatic plants which live in the lake. The lake also supports and protects other wildlife and natural resources, including a variety of water fowl, which regularly use the lake and nest in the land.

The organization also conducted a Fish Stocking Report to maximize the desired output for anglers. The report limits the number and/or size of fish that may be harvested which are set in place to maintain successful and desirable fish populations within a body of water. The organization stated the report is made available to all members of the ORG and any other attendees at their monthly meeting.

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The organization when asked how the general public is aware of their activities and provide substantiation of their solicitation of the public, responded it was stated the organization had regularly advertised all of its functions up until the year through the use of a large "Rent A Sign" located on the northeast corner of its facility. In addition you stated the organization in the past promoted its events through the use of brochures that were posted in public places the members were able to post them in. For the year under examination the organization had no such solicitation.

Club according to your Constitution and Bylaws are all members of the ORG and only that organization shall be considered members in the Club. ORG leases the property and facilities from Club which is not tax exempt.

LAW:

Section 501(c) (3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states that the term "charitable" is used in of the Code in its generally accepted legal sense and includes the advancement of education and science.

Section 1.501(c)(3)-1(d)(3)(i)(b) of the regulations defines the term "educational" as including the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c) (3) -1(d) (1) (ii) of the regulations provides that an organization is not organized and operated exclusively for charitable purposes unless it serves a public rather than a private interest. To meet this requirement that it serve a public purpose, an organization must establish that it is not organized or operated for the benefit of private interests. The law requires that an organization claiming exemption under Code Sec. 501(c)(3) also be operated exclusively for the prescribed exempt purposes. Under the "operational" test of Reg. §1.501(c)(3)-1(c), an organization is regarded as operated "exclusively for" exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes. As with the "organizational" test, an organization is not regarded as exempt "if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." The operational test requires that no private inurement results from the net income of the organization. Section 1.501(c) (3)-1 of the Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c) (3). It is quoted, in part, as follows:

"(A) Organizational and operational tests. (1) In order to be exempt as a organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the

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organizational test or the operational test, it not exempts. (2) The term "exempt purpose or purposes", as used in this section, means any purpose or purpose specified in Section 501(c) (3)...."

"(c) Operational test (1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of any exempt purpose.

(2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals...."

TAXPAYER'S POSITION

Taxpayer feels they provided sufficient information to determine their 501© (3) status.

GOVERNMENT POSITION

Several published Revenue Rulings have recognized the charitable and educational nature of organizations designed to preserve and promote the natural environment. For example, Rev. Rul. 70-186, 1970-1 C.B. 128, holds that an organization formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake to enhance its recreational features qualifies for exemption under section 501(c)(3) of the Code. In addition, Rev. Rul. 67-292, 1967-2 C.B. 184, holds that an organization formed for the purpose of purchasing and maintaining a sanctuary for wild birds and animals for the benefit of the public may qualify as exempt from Federal income tax under section 501(c)(3). *Rev. Rul. 76-204*, provides, in effect, that preserving ecologically significant land is a charitable purpose and activity without the educational and open public access rationale stressed in *Rev. Rul. 67-292*. It recognizes that efforts to preserve and protect the natural environment for the benefit of the public serve as a charitable purpose in itself.

Furthermore, the promotion of conservation and protection of natural resources has been recognized by Congress as serving a broad public benefit. For example, Congress declared in the National Environmental Policy Act of 1969, 42 U.S.C. §4321 (1969), that the prevention and elimination of damage to the environment stimulates the health and welfare of man and enriches the understanding of ecological systems and natural resources important to the nation.

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The benefit to the public from environmental conservation derives not merely from the current educational, scientific, and recreational uses that are made of our natural resources, but from their preservation as well. Only through preservation will future generations be guaranteed the ability to enjoy the natural environment. A national policy of preserving unique aspects of the natural environment for future generations is clearly mandated in the Congressional declarations of purpose and policy in numerous Federal conservation laws. See, e.g., Wilderness Act, 16 U.S.C. §1131 (1964) (wilderness areas); Estuarine Areas Act, 16 U.S.C. §1221 (1968) (estuaries); Wild and Scenic Rivers Act, 16 U.S.C. §1271 (1968) (rivers); Water Bank Act, 16 U.S.C. §1301 (1970) (wetlands). While the public benefits from environmental conservation are clearly recognized and measurable, an equally important public purpose is served by preserving natural resources for future generations.

The organization is not operating similar to Revenue Ruling 67-292, because in that ruling the organization purchased or maintained a large tract of forest land to be reserved as a sanctuary for wild birds and animal and it was open to the public for educational purposes. In Revenue Ruling 76-204 the organization conducted educational activities with limited public access to the land. The organization permitted other organization's to conduct educational and scientific research or study and the organization worked closely with Federal, state, and local government agencies, and private organizations regarding concerns for environmental conservation. Your organization provided a copy of a study on how to best maintain the existing lake fish stock. The lake surveys are also used to determine which types of aquatic plants exist in the lake. The survey results were shared with only the members of the organization and there was no government involvement regarding concerns for environmental conservation. The survey was conducted to stock the lake for the benefit of the members for recreational purposes, which is not a charitable nor educational purpose under Internal Revenue Code 501(c)(3).

It was noted the organization conducts bingo and pull tabs and according to our internal records the organization has never filed Form 11-C or Form 730. In addition, information we obtained from the Department of Revenue showed no record of the organization filing the required reports with their agency either and thereby conducting illegal charitable gaming activities. The forms and returns that were not filed with the State were the following:

Returns	Bingo Quarterly Tax Return Charitable Games Application for License Pull Tab and Jar Game Quarterly Tax Return
Forms	Bingo Application for License List of Bingo Workers Charitable Game Application for License List of Charitable Game Workers

The organization did file an annual form with the Attorney General for charitable gaming.

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Review of the organization's Form 990 showed that your income was derived from membership dues, interest, fundraising, bar, hall rental; pull tabs, video machines and kitchen. The Bingo income was not reported on the return and was conducted by the women's auxiliary. Expenses were incurred for occupancy, legal fees, printing, and miscellaneous expenses and there were no expenses incurred for education or conservation of the lake. Expenses were only incurred for recreational activities.

CONCLUSION

The organization is not organized or operating as a 501(c)(3) organization. The organization's activities are not in furtherance of charitable or educational purposes. The exempt status of the organization should be revoked effective Date1. The organization is required to file Form 1120 - U.S. Corporation Income Tax Return. Contributions to the organization are no longer deductible.



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service

ORG

Taxpayer Identification Number:

Form:

990

Tax Year(s) Ended:

December 31

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Local Office

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Enclosures:
Publication 892
Publication 3498
Report of Examination