



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: 200818022  
Release Date: 5/2/08

Date: February 4, 2008

UIL Code: 501.08-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

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)(8). 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.

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, you should 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

Letter 4040 (CG) (11-2005)  
Catalog Number 47635Z

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



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date: NOV 26 2007

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

A = Association  
B = State  
C = Date  
D = Investment Firm

UIL Index

501.08.00

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)(8). The basis for our conclusion is set forth below.

**Issues:**

Does the applicant, which will be referred to as A, qualify for exemption under section 501(c)(8) of the Code ?

**Facts:**

You, A, are a B nonprofit corporation formed on C. Your Articles of Incorporation provide that you were formed to be a Mutual Benefit organization.

Your Bylaws state the following:

Article I states that A is a not-for profit mutual benefit corporation based on the 501(c) (8) rules and operating under the lodge system. A's key philosophy is based on the premise that it is the inalienable right of every person to be able to provide for their personal retirement. The purpose of A is to provide a means by which a person can build a retirement income through membership in A.

Article II states that an associate membership may be acquired by filing the appropriate documents and adopting a method of establishing a retirement level through cash purchase or by the payment of monthly dues. Associate membership can be purchased and given as gifts from birth through retirement age. An associate's membership has no par value until the associate's retirement age is realized. An associate's membership is transferable as a gift until retirement payments begin. An associate's membership cannot be rescinded or be traded or sold.

Article III states that retirement status will mature upon reaching the age of sixty-five. The associate will receive a monthly payment based on the degree of paid up membership. Payments will be on a schedule based on a percent per year, payments to be continued until death. Retirement benefits received by an associate member will be subject to all the laws of the land.

Article V states upon joining A each person must adopt a plan to achieve the goal of being a full member. This plan can be incremental or in a lump sum. A member can at any time begin a plan to achieve full membership.

A's fees shall be handled by an investment firm in such a manner that no two consecutive years shall dip below ten percent return on investment. Charitable contributions received beyond the cost of operation will be divided into a number of associate memberships and will be given away each year to newborn children in a drawing.

Article VIII states the Board shall select an agent from a reputable firm to manage an account for all dues. Dues shall be applied to the record of the Associate at the time of payment and a record of degree of completeness shall be delivered to the Associate.

Article IX states that retired persons who are not members but wish to assist in the promotion of A may apply for an Honorary Membership, and represent and promote A in enlisting persons to join and prepare for their retirement.

Article X states that A recommends that each associate twenty-one years of age and older give a dollar gift a month to A, either monthly or yearly. This will keep the Associate's records current and apply towards the cost of A. Those funds greater than needed will be placed with other gifts or grants under Article I. Article I states A will strive to secure charitable contributions to enable underprivileged to participate in membership.

You stated in your application that it is the wish of A that by gaining exemption under 501(c)(8) you can solicit funding from foundations, businesses and individuals, to use as donations to gift the underprivileged membership.

In your letter of June 12, 2007 you state that A is a fraternal organization that will maintain a record of its associate members. A will solicit the aid of D to form managed trust fund that will use the collective membership funds to seek to increase the maximum returns on the trust to a level where associate members will receive an annuity upon reaching the age of retirement or 65 commensurate age where the annuity will be set.

Most business will be conducted over the Internet. Board meetings will be live as well as canned for later review. Only moneys from yearly dues will be handled by the office. All other funds will be deposited directly into the trust. Donations will be accumulated in the trust and associate membership awarded to newborn at a level of one thousand per newborn (\$1,000.00) (to be increased by the board with the duration of time) in a lottery fashion to randomize distribution.

You provide that associate members will receive through their membership managed financial assets just like public employees enjoy now and the ability to increase their membership points which no retirement package offers with the exception of 401K. The membership points remain at zero value until retirement, which removes the temptation of loading the individual plan with debt and removes them from bankruptcy. It will not be restricted to the amount [an individual] earn[s] like social security so that low wage earners can through frugality provide a sustainable retirement.

The trust management cost will be born by the trust giving each Associate equal treatment. The size of the trust will afford Associates opportunities not afforded to small account holders.

You state that the operations will be carried out in our current business and as we will enlist the help of the membership and current retirees. The organizations goal is to restrict the cost of operations to zero by the use of computers, and our integrity by using all offline management.

You were asked in a letter if A would provide payments for life, sickness or accident insurance. You stated in your response that you will not be handling any insurance. When your membership reaches a significant point you will seek out service providers that will offer a group rate to associate member, both working and retired.

### Law

Section 501(c) (8) of the Internal Revenue Code provides for the exemption from Federal income tax of fraternal beneficiary societies, orders, or associations;

- (A) Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and
- (B) Providing for the payment of life, sick, accident or other benefits to the members of such society, order, or association or their dependents.

Section 1.501(c)(8)-1 of the Income Tax Regulations states that a fraternal beneficiary society is exempt from tax only if operated under the "lodge system" or for the exclusive benefit of the members so operating. "Operating under the lodge system" means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called lodges, chapters, or the like. In order to be exempt it is also necessary that the society have an established system for the payment to its members or their dependents of life, sick, accident, or other benefits.

Rev. Rul. 63-190, 1963-2 CB 212, describes an organization whose purposes, as stated in its constitution, are to spread friendship and fraternity in the club; to aid the membership in the event of illness, personal injury, or accident; to pay benefits to sick members; in the event of death, to pay a death benefit to whomever the member shall have designated; and to develop patriotism among the membership. The ruling held a nonprofit organization (not operated under the lodge system) which maintains a social club for members and also provides sick and death benefits for members and their beneficiaries, does not qualify for exemption from Federal income tax either as a social club under IRC 501(c) (7), a civic league under IRC 501(c) (4), or fraternal beneficiary society under IRC 501(c) (8).

Rev. Rul. 55-495, 1955-2 CB 259, held, in part, an association which provides for the payment of life, sick, accident or other benefits to members or their dependents, but does not operate under the lodge system, or for the exclusive benefit of the members of an organization so operating, is not entitled to exemption from Federal income tax as an organization described in section 501(c) (8) of the Internal Revenue Code of 1954.

Rev. Rul. 73-165, 1973-1 CB 224 held, in part, a fraternal beneficiary society that operates under the lodge system and provides for member benefit payments may qualify for exemption regardless of whether the fraternal or the insurance features predominate, as long as both features are present.

Rev. Rul. 84-48, 1984-1 CB 133, holds Section 501(c)(8) of the Code provides for the exemption from federal income tax of fraternal beneficiary societies, orders, or associations that operate under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and that provide for the payment of life, sick, accident, or other benefits to the members of such societies or their dependents.

The term "other benefits" as used in section 501(c)(8) of the Code, is limited by the type of benefit specified in that section. It is applicable only to those benefits which are of a like kind and nature to those enumerated.

Historically, sick benefits have been understood to include benefits designed to compensate for loss of income during a period of illness, and accident benefits have been understood to encompass benefits payable due to a loss of earning power resulting from an injury. For a benefit to be of a like kind and nature to sick or accident benefits and, therefore, to be included within the term "other benefits" under section 501(c)(8) of the Code, the benefit must be similar in nature to protection designed to compensate for expenses resulting from bodily injury or loss of earning power.

National Union v. Marlow 374 F.775, 778 (1896) indicates what constitutes a fraternal beneficiary society. The case held, in part, ... a fraternal-beneficial society... would be one whose members have adopted the same, or a very similar calling, avocation, or profession, or who are working in union to accomplish some worthy object, and who for that reason have banded themselves together as an association or society to aid and assist one another, and to promote the common cause. The term fraternal can properly be applied to such an association, for the reason that the pursuit of a common object, calling, or profession usually has a tendency to create a brotherly feeling among those who are thus engaged. ... Many of these associations make a practice of assisting their sick and disabled members, and of extending substantial aid

to the families of deceased members. Their work is at the same time of a beneficial and fraternal character, because they aim to improve the condition of a class of persons who are engaged in a common pursuit, and to unite them by a stronger bond of sympathy and interest....

Philadelphia & Reading Relief Association v. Commissioner, 4 B.T.A. 713, at 725 (1926), provides that the organization was denied exemption because it lacked the necessary fraternalistic element. The court noted the association's membership consisted of individuals whose vocations were as numerous and diverse as the classifications of jobs of a railroad company; membership was open to all employees of the company; the only motive for the association's existence was a mercenary one (to provide insurance benefits); and the organization had neither lodges, rituals, ceremonials, nor regalia commonly associated with fraternal associations.

#### **Application of Law:**

In order to qualify for exemption under section 501(c)(8) of the Internal Revenue Code, an organization must have a fraternal purpose, must operate under the lodge system, and must provide for the payment of life, sick, accident, or other benefits to its members. Operating under the lodge system requires at a minimum, two active entities, a parent and a subordinate. Activities must be carried out under a form of organization that comprises local branches called lodges, chapters, and the like. The local branches must be chartered by the parent organization and largely self-governed. See Section 1.501(c)(8)-1 of the Income Tax Regulations.

You are similar to the two organizations described in Rev. Rul. 63-190 and Rev. Rul. 55-495 that were denied exemption under section 501(c)(8) of the Code, because, like these organizations, you have not demonstrated that you operate under the lodge system. You have not proven that your activities are carried on under a form of organization that comprises local branches that are chartered by a parent organization and that are largely self-governing.

Furthermore, you have not proven that you carry on fraternal activities that are required under section 501(c)(8) of the Code. Even though your members may enjoy a common tie or goal, you have not shown evidence that "rituals, ceremonials, and regalia" commonly associated with fraternal associations are present. Therefore, you are similar to the organizations described in Rev. Rul. 73-165 and Philadelphia & Reading Relief Association v. Commissioner, *supra*.

In National Union v. Marlow, *supra*, the court provides an explanation of a fraternal beneficiary society – you do not meet the court's definition. You have not demonstrated that as a fraternal-beneficial society your members have adopted the same, or very similar calling, avocation, or profession, or who are working in union to accomplish some worthy object, and who for that reason have banded themselves together as an association or society to aid and assist one another, and to promote the common cause. You bring individuals together for the purpose of providing a means for those individuals to invest their money in order to provide for a retirement annuity. This is not an acceptable purpose under section 501(c)(8) of the Code.

An additional requirement of section 501(c)(8) of the Code is that an organization provide for the payment of life, sick, accident, or other benefits to members of such society, order, or association or their dependents. You have not demonstrated that you will provide for the

payment of life, sick, accident, or other benefits to your members or their dependents. When asked whether you provide for the payment of life, sick, or accident insurance, you responded that you will not be handling any insurance. When your membership reaches a significant point, you will seek out service providers that will offer a group rate to associate members, both working and retired.

Following the rationale of Rev. Rul. 84-48, other benefits have been understood to include benefits designed to compensate for loss of income during a period of illness, and accident benefits have been understood to encompass benefits payable due to a loss of earning power resulting from an injury. Therefore, providing a means for individuals to collectively invest their personal funds for the sole purpose of generating future retirement income does not fall within the definition of "other benefits." Retirement income is not income for the purpose of compensating for expenses resulting from bodily injury or loss of earning power. Furthermore, loss of earning power, for the purpose of Code section 501(c)(8), does not encompass retirement, because retirement is an intentional act of loss of earning power as-opposed-to an unintentional act of earning power as a result of injury or other circumstances beyond an individual's control.

**Applicant's Position:**

Your letter outlines the position of the organization with regard to its qualification for tax exemption under section 501(c)(8) of the Code. You state that you are forming a fraternal beneficiary society under the lodge system for the exclusive benefit of the members. You also state that you cannot start to run without first crawling and that every organization begins with the first lodge and then adds chapters. A is the first lodge or Grand lodge. You stated that your understanding is that the government wishes that all activities carried out in the Grand Lodge and its chapters to occur under the bylaws of the Grand Lodge and its 501(c)(8). This is to restrict the use granted by the government from being abused by allowing activities other than those spelled out in the bylaws. By this requirement, the government is stating that if we grant this to you, along with it comes responsibilities that you will be held accountable for as a Grand Lodge for the actions and conduct of the Chapters as well as the Lodge.

**Services Response to Applicant's Position:**

We hold that you do not meet the requirements for tax exemption under section 501(c)(8) of the Code as a fraternal beneficiary society operating under the lodge system that provides life, sick, accident or other benefits to members. You do not have a fraternal purpose, do not operate under the lodge system, and you do not provide life, sick, accident or other benefits to members.

**Conclusion:**

Based on the facts presented above, we hold that A does not meet the requirements for tax exemption under section 501(c)(8) of the Code.



You do not have a fraternal purpose, do not operate under the lodge system and do not provide for the payment of life, sick, accident or other benefits to its members.

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. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

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 our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

In order to have your case forwarded to our Appeals Office, you must provide the following information, which is outlined on page 2 of Publication 892 under the heading "Regional Office Appeal":

- (1) The organization's name, address, and Employer Identification Number;
- (2) A statement that the organization wants to appeal the determination;
- (3) The date and symbols on the determination letter;
- (4) A statement of facts supporting the organization's position in any contested factual issue;
- (5) A statement outlining the law or other authority the organization is relying on; and
- (6) A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service 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](http://www.irs.gov), Forms and Publications.

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.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service  
EO Determinations Quality Assurance

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements