



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200905029**
Release Date: 1/30/2009

Date: November 3, 2008

501.03-30
501.03-09
501.32-00
501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

SE:T:EO:RA:T:3

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)(3). 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. Pursuant to a telephone conversation with your representative earlier today, we were informed that your request for a protest has been withdrawn. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. 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.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

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,

Robert 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: June 20, 2008

501.03-09
501.03-30
501.32-00
501.33-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

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

You were incorporated as an Italian culture club in . Your purposes, as stated in your original Articles are to "conduct an association made up of persons who...shall be residents of ...to promote and further good habits and moral virtues, which are most essential to happiness and welfare, and constitute the very foundation of good citizenship ...provide its members with pecuniary and other assistance...assist such members who shall become widowers and orphans...." Your purposes also include the ability to buy and sell, hold mortgages, transfer and convey real estate and personal property, and to loan funds to members. Your membership is limited to males who have reached the age of majority and are of Italian descent or lawfully married to an individual of Italian descent. Your By-laws, and your organizing documents clearly indicate that you were formed as an Italian fraternal beneficiary society to pay benefits to your members.

In July 1991, you forfeited your charter with the state for failure to file your annual returns. In your application, you attributed the failure to file to 60% of your members inability to speak English as their first language, 80% of your members inability to write English, and the fact that most of your members are 50 years of age or older. You did not learn of the forfeiture until 2005 when the real estate attorney handling the sale of your clubhouse determined that you were not in good standing with the Secretary of State. Your corporate charter was later reinstated. You are not affiliated with any other organization.

According to the financial information you provided to supplement your application, your primary sources of financial support are membership fees and rental income. Your current membership consists of 115 men, 15 of whom are nonpaying members. Yearly membership dues are \$100. Meetings are held monthly at a building you refer to as the "club" and only members are allowed to attend. The notices of your monthly meetings are posted at your building and published in an Italian language newspaper. The only benefits that you claim your members receive are the

right to attend meetings, vote, enjoy the use of the club facilities between meetings, and participate in educational and cultural events sponsored by other organizations. Nonmembers may also participate in events sponsored by other organizations but may not otherwise use your facilities. In addition, your meetings have included discussions of parking for particular members which infers that assigned parking may also be a benefit of membership. In addition to the monthly meetings held at the club, you operate a snack bar where members can enjoy Italian coffee, espresso, or soft drinks. Members are also allowed to bring in their own alcohol. You do not have a liquor license, nor is your bar open to the public. It is open to members on a daily basis.

You indicated in your application that the original clubhouse was sold during the year 2005 to an unrelated and unaffiliated party and another building was purchased using the proceeds from the sale and loans from two of your members. You did not provide information regarding the date of acquisition or the purchase price of your original club facility or whether the property was titled in your name or that of individual members. It is also unclear as to how the title to this new property is held and whether additional financing was obtained, and if so, the related terms and conditions.

The new building you purchased consists of a one-story building; 1,000 square feet is occupied by your club and the remainder is occupied by an adjacent barbershop and vacuum cleaner repair shop. The lessees of both of these shops pay you rent in the amount of \$600 per month which is the same amount they paid to the previous landlord. The reason you provide for acquiring both stores is the seller's refusal to sell the real estate as a single integrated parcel. You do not rent out the club and you have indicated that the rental income from the two stores is used to pay for club activities, real estate taxes, insurance, and maintenance.

You have indicated in the additional information provided to us that you also receive funds from attendance by your members and the general public at educational and cultural events held at the club. These events include a Columbus Day Parade, an Easter festivity, an Italian poetry book reading, and language classes taught by your non-paid members which are held one or two days per week. The fees you charge for attendance of these events are the same for members and nonmembers. You have not specified the amount of the fees charged, nor have you provided us with any evidence of attendance at any of these events by members or nonmembers, since your organization does not use a sign in sheet to track attendance.

You have requested tax exempt status under section 501(c)(3). However, based on the initial purpose of your organization, you are more akin to a fraternal organization under section 501(c)(8). Since the filing of your application, you have provided additional information to refute this. You attest that none of your members have ever been provided pecuniary or other assistance, such as widow or orphan benefits. You have expanded eligible members to include anyone who is interested in Italian language and culture. Moreover, you have indicated your intent to amend your purposes within your By-laws which is "to promote and advance the Italian culture and traditions through education and by increasing public awareness of the culture and traditions."

To further your purposes, you have stated that your discussions at your monthly meetings are spoken in Italian and include such topics as promoting Italian culture and heritage in your community. Members fluent in Italian teach other members who need help in honing their ability to speak Italian. Other Italian fraternal organizations provide you with their list of upcoming

events to include in your public calendar of Italian events. You subscribe to Italian television events so that members and nonmembers may view Italian documentaries and other Italian programs. Additionally, as aforementioned, you offer language classes and may offer classes on Italian wine making, and you sometimes hold cultural events which your members advertise by word of mouth or through the use of inexpensive fliers placed in windows of local merchants.

You indicate further that you intend to award college scholarships to students interested in learning Italian language and culture that demonstrate a need for financial assistance. The amount and frequency of the scholarships will be determinative on your financial condition. The applicants will be limited to graduating high school seniors that reside in your town, and members or their families are not restricted from applying. The criteria for selection will be based on academic ability, character, good citizenship, as well as community service and motivation to pursue courses of study related to Italian language and culture. The initial selection committee will be your directors who will review the applications and make recommendations to your members whom will ultimately decide, by a majority vote, the scholarship recipients. It is unclear how many high schools were notified of your scholarship program and were provided with application forms and whether any scholarships have been awarded to date.

Section 501(c)(3) of the Internal Revenue Code provides, in part, for the exemption from federal income tax of corporations organized and operated exclusively for charitable, scientific, or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual and it does not participate or intervene (inclusive of publishing or distributing statements) in any political campaign or on behalf of (or in opposition to) any candidate for public office.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides, that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated for one or more of the purposes specified in that section. If an organization fails to meet either the organizational or operation test, it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the regulations provides that an organization is organized exclusively for the required purposes only when its articles or other creating document authorizes it to carry on only activities that are in furtherance of those purposes. An organization is not organized exclusively for exempt purposes if its articles expressly empower it to carry on, other than as an insubstantial part of its activities, activities which are not in furtherance of exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is not broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(b)(2) of the regulations defines the term "articles" to include the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to exempt purposes. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal government,

or to a state or local government, for a public purpose, or would be distributed by a court to another organization to be used in such a manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. An organization does not meet the organizational test if its articles or the law of the state in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Section 1.501(c)(3) -1(c)(1) of the regulations provides that 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 the 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 an exempt purpose.

Section 1.501(c)(3) -1(d)((1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes described in section 501(c)(3) unless it serves a public rather than a private interest. In order to meet this requirement this section further provides that it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3) -1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense, which includes advancement of education.

Section 1.501(c)(3) -1(d)(3) of the regulations provides that the term "educational" as used in Section 501(c)(3) of the Code, relates to (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community.

In construing the meaning of the phrase "exclusively for educational purposes" the Supreme Court in Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), stated that this plainly means the presence of a single noneducational purpose, if substantial in nature, will destroy exemption regardless of the number or importance of truly educational purposes.

Rev. Rul. 66-179, 1966-1 C.B. 139 illustrates how an organization commonly referred to as a "garden club" could qualify for exemption under different sections of the Code depending on its form of organization. In describing a garden club that qualifies for exemption under section 501(c)(3), the club in the first situation was incorporated as a nonprofit organization for the purposes of instructing the public on horticultural subjects. In furtherance of its purposes, the organization maintained and operated a free library of materials on horticultural and allied subjects, instructed the public on gardening by means of radio, television, and lecture programs, held public flower shows of a noncommercial nature, made awards to children for achievement in gardening and made awards for civic achievement in conservation and horticulture. Its membership was comprised primarily of amateur gardeners, the public, and others not connected to horticulture.

In the second situation of Rev. Rul. 66-179, the facts were similar as in the first situation, except a substantial part of the organization's activities, but not its primary activity, consisted of social functions for the benefit, pleasure, and recreation of its members. It was determined that the facts in this situation were distinguishable from the first situation, in that the instant organization, conducted substantial social functions not in furtherance of any of the purposes specified in section 501(c)(3). The organization did not qualify for exemption under section 501(c)(3) since it was determined that it was not operated exclusively for one or more exempt purposes because more than an insubstantial part of its activities were not in furtherance of a 501(c)(3) purpose. However, the organization did qualify for exemption under section 501(c)(4) of the Code and was held to be operated primarily to bring about civic betterment and social improvements.

Whereas in the fourth situation of Rev. Rul. 66-179, a garden club qualified for exemption under section 501(c)(7). The club was organized by amateur gardeners to promote their common interest in gardening. The organization held flower shows and exhibits to display members' achievement in home gardening; scheduled weekly meetings devoted primarily to informal social hours during which matters related to gardening were discussed; and issued a publication containing news about members' social activities and achievements in home gardening. Its funds were derived from membership dues, fees, and assessments and participation in its programs were limited to members.

Rev. Rul. 67-139, 1967-1 C.B. 129 demonstrates how a gem and mineral club formed to advance the earth sciences may qualify for exemption under section 501(c)(3). The club's membership consists primarily of amateurs and hobbyists interested in geological, mineralogical, and lapidary activities. In furtherance of its purposes the club holds monthly lectures where qualified experts provide discussion, instruction and techniques; sponsors field trips; issues a bulletin containing educational materials; maintains a library of reference materials; assists the local museum in its display of gems and minerals; and annually conducts a show for the general public. The general public just as its members are invited to attend all club functions and participate in its programs on the same basis. It was held that the lectures, discussions, field trips, and shows conducted by the club, to which the general public is invited, are recognized educational methods within the meaning of the regulations even though they serve recreational interests.

Rev. Rul. 73-439, 1973-2 C.B. 176 held as non-exempt a discussion group that held closed meetings at which personally oriented speeches were given followed by the serving of food and other refreshments. Each meeting was conducted as to encourage personal contact and fellowship among members. The topic discussed by the faculty guest speakers did not necessarily reflect their particular areas of academic expertise. It was concluded that there was no evidence that the topics discussed fell within any particular field of inquiry nor did the discussions communicate any organized body of knowledge or information that would develop or improve the individual capabilities of the participants to a significant extent or result in any public benefit. The meetings were more akin to the socializing that takes place at meetings of fraternal and professional clubs.

In deciding whether you are organized and operated exclusively for charitable and educational purposes, we must examine and consider all the facts and circumstances. As illustrated in the summarized revenue rulings, an organization can attain exempt status under section 501(c)(3) by having its purposes qualify as charitable and educational. This can be accomplished through

offering structured and purposeful educational programs to its members and the public, educational bulletins, public displays, public shows, and maintaining a library of reference materials.

Your activities are similar to the organization described in Rev. Rul. 73-439, for your monthly meetings are closed to the public and members are able to enjoy snacks, coffee drinks, or even their own alcoholic beverages while present at these meetings or at any other time. Also, the discussions, although in Italian and although include topics such as promoting Italian culture in the community, do not constitute an organized body of knowledge or information that would improve or develop the members capabilities nor result in any benefits to the public. The fact that some members may improve their Italian speaking abilities as a result of attending the meetings does not necessarily qualify the organization as being engaged in an activity that is primarily educational in the charitable sense of serving a public interest or purpose. It is evident that the functions of your organization, as the organization in the ruling are to a significant extent designed to stimulate fellowship among your members alone.

You are distinguishable from the organizations described in the first situation of both Rev. Rul. 66-179 and Rev. Rul. 67-139, since these organizations provided structured and purposeful instruction and training that was educational to its members and to the public. The horticulture and geological, mineralogical, and lapidary training and instruction were presented by effective means of correspondence such as issuing bulletins, radio and television programs, and through lectures, public displays and shows. Moreover, both organizations maintain and operate a library of reference materials available to members and the public. Although, you offer language classes one or two days per week, subscribe to Italian television, and occasionally hold cultural events, your members seem to have exclusive use of the building at all other times and you have not substantiated that these classes and events have included attendance by the public.

Based on the financial information you provided, it appears that your bar is used regularly and your members have exclusive use of the bar. This fact, when considered with the fact that your members are allowed to bring in their own alcohol, supports the finding that you organized to operate primarily as a bar. Furthermore, according to your letter, dated June 15, 2007, your advertising is done by word of mouth, and the newspaper article written in Italian that you provided does not appear to be widely distributed and only references the opening of your new location as opposed to publicizing any of your educational and cultural events. Therefore, a substantial part of your activities are more social rather than charitable or educational in nature, unlike the organizations distinguished above.

One of your primary activities is the rental of a barbershop and vacuum cleaner repair shop. This activity is indistinguishable from a commercial activity. Therefore, the rental of these stores would not be regarded as furthering any charitable purpose.

Furthermore, it is not clear from the information you provided related to your scholarship program how many awards have been granted, who the recipients were, whether they were advertised, and how many high schools were notified. There also are no restrictions on members or their families receiving these scholarships.

Your meetings have included discussions on parking spaces for members which infer members may receive free parking. These facts considered together with all the other facts and

circumstances, require us to conclude that your principle purpose is not educational within the meaning of section 501(c)(3). You are also not organized exclusively for exempt purposes within the meaning of section 1.501(c)(3) -1(c)(1) of the regulations, and you operate primarily more for private rather than public purposes within the meaning of section 1.501(c)(3) -1(d)(1) of the regulations.

In addition, we conclude that you are not organized exclusively for charitable purposes within the meaning of section 1.501(c)(3) -1(b)(1) of the regulations since your current Articles and Bylaws do not limit your purposes to one or more exempt activities and do expressly authorize you to engage in nonexempt activities. Also, your dissolution clause does not meet the requirements of section 1.501(c)(3)-1(b)(4) because the dissolution is improperly set to occur during the lifetime of an individual.

In light of all of the above, we hold that you are not organized and operated for charitable purposes within the meaning of section 501(c)(3) of the Code. Therefore, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal tax returns. Furthermore, contributions to you are not deductible under section 170 of the Code.

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 the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, 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 do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

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. That letter will provide information about filing tax returns and other matters.

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

Internal Revenue Service
TE/GE SE:T:EO:RA:T:1

1111 Constitution Ave, N.W.
Washington, DC 20224

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