



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: 201043042
Release Date: 10/29/10
Date: August 2, 2010
UIL Code: 501.07-00

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)(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,

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: May 25, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Response Date:

Legend:

M =
N =
State =
Country =
Date =

Dear

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

Facts

The information submitted indicates that you, M, were incorporated under the laws of State on Date.

Your Certificate of Incorporation (COI) states that you were organized to "enable members in the United States to have access to up-to-date information regarding" N, a professional sports team from Country. You were also organized to "promote active interaction and communication within members." Your COI states further that you will not discriminate against any person

based on race, color, or religion and that your members “must share interests and have a common goal directed toward pleasure, recreation, and other non-profitable purposes while enhancing the role of the organization and what this represents.”

According to your application, you are an internet-based organization engaged primarily in operating and maintaining a website for your members, for the purpose of supporting N. Your organization, you state, is one of several organizations located throughout the world that supports N. Your website contains a forum through which members can obtain and exchange information on this team. Through this exclusive forum, your members make personal contact with each other through private messages, e-mail, and posting comments. Members can also contact your board of directors through an established e-mail account.

The website and forum, you state, were established for “general and public information and easy interaction” for your members. You state that your membership consists of “individuals and groups dedicated to the promotion and interaction of” N fans, adding that membership “is open to anyone wishing to render support, guidance upon prior approval by the Board of Directors.” Your website is open to the public “with the intention of reaching out to the general public.”

Your application states that you will conduct membership meetings online, but that you have not conducted any face-to-face meetings or gatherings. Only board members are allowed to vote and make membership decisions. The topics discussed at your online meetings pertain to “current affairs, such as an update of documentation presented to the IRS or any other organization, utilization of funds obtained through membership dues such as t-shirts, keychains, etc.” You stated in your letter dated May , 20 , that

forum have the ability to contact other members via private messages [through the forum]; email each other and/or post a comment in the forum for other members to reply,” adding, “With regards to face-to-face contact, [you are] working hard to establish a day in which we can all gather together. Schedule conflict are not easy to overcome. Most of the members already know each other personally.”

According to your application, your members pay annual dues in an amount originally established by your incorporator and annually reviewed at a board of director meeting. You state that membership dues is your only source of financial support, but you also have stated that you invest funds collected from your membership dues to provide members with free t-shirts, caps, scarves, etc. The dues, you further state, are used to cover the one-time fee for belonging to a broader association that supports N. Membership in this broader association “provides its members to easier acquisition of tickets for soccer games and discounted official N merchandise.” You state that you have paid \$ to this broader association once and that future annual payments have been waived.

Law

Section 501(c)(7) of the Code provides for an exemption from U.S. federal income tax for clubs organized substantially for pleasure, recreation, and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

Section 1.501(c)(7)-1 of the Income Tax Regulations provides that this exemption generally extends to social and recreation clubs that are supported solely by membership fees, dues, and assessments. In addition, a club that engages in a business is not deemed organized and operated exclusively for pleasure, recreation, and other non-profitable purposes and, thus, is not deemed exempt under section 501(a) of the Code.

Rev. Rul. 55-716, 1955-2 C.B. 263, holds that an organization formed for the purpose of furnishing television antenna service to its members is not entitled to exemption from federal income tax under section 501(c)(7) of the Code. The term "club," as used within section 501(c)(7), contemplates the commingling of members, one with the other, in fellowship. Personal contacts and fellowship must play a material part in the life of an organization for it to come within the meaning of the term "club."

Rev. Rul. 58-589, 1958-2 C.B. 266, sets forth the criteria or tests for determining whether an organization qualifies for exemption from tax under section 501(c)(7) of the Code. In making this determination, all facts pertaining to the organization's form, method of operation, and activities should be considered. The organization must establish that (1) it is a "club" organized and operated exclusively for pleasure, recreation, or other non-profitable purposes and (2) no part of its net earnings inures to the benefit of any private shareholder or individual. To be deemed a "club," 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.

Rev. Rul. 70-32, 1970-1 C.B. 132, holds that a flying club providing economical flying facilities for its members but having no organized social and recreation program does not qualify for exemption under section 501(c)(7) of the Code. In this case, the sole activity of the club involved the ownership, operation, and maintenance of the aircraft for use by the members, and there was little commingling among members for social or recreational purposes. For the club to be exempt, the ruling explains that there must be an established membership of individuals, personal contacts, and fellowship. Also, commingling of members must play a material part in the organization's activities. This organization's sole activities consisted of rendering flying services to its members, and there was no significant commingling of its members.

Rev. Rul. 74-30, 1974-1 C.B. 137, holds exempt under section 501(c)(7) of the Code a flying club of limited membership that provided flying privileges solely for its members, assessed dues based on the club's fixed operating costs, and charged fees based on variable operating expenses. The organization's members were interested in flying for a hobby, constantly commingled in informal meetings, and had constant person-to-person association. This organization was found distinguishable from the flying club in Rev. Rul. 70-32, *supra*, because there the club was open to all persons interested in flying, members did not join to participate as a group in a hobby for recreation, and the members had no expectation of personal relationship with other members.

In United States v. Fort Worth Club of Fort Worth Texas, 345 F.2d 52 (5th Cir. 1965), *on reh'g*, 348 F.2d 891 (1965), the court ruled that a men's club was not exempt under section 501(c)(7) of the Code, because the organization was in the business of leasing office space to the general public. In reaching its conclusion, the court stated that the legislative history of section 501(c)(7) "urges a particularly strict construction for exemption of social clubs."

Rationale

Organizations seeking exemption under section 501(c)(7) of the Code need to satisfy the following statutory requirements: (1) be a club; (2) be organized for pleasure, recreation, and other nonprofitable purposes; (3) have substantially all of its activities devoted to such purposes; (4) have no part of its net earnings inure to the benefit of any private shareholder; and (5) have no written policy that discriminates against individuals seeking membership on the basis of race, color, or religion. See, section 501(c)(7) and Rev. Rul. 58-589, supra.

You were organized to support N, the professional sports team from Country. Your sole activity consists of operating and maintaining a website through which members can obtain and exchange information about N. Your members have access to a members' only forum located on your website and through this forum can contact each other via private messages and e-mails. While you have stated that you will have online membership meetings, you have not provided any evidence that those meetings have actually been conducted, and you have not indicated that they would involve any person-to-person contact. In addition, the topics discussed at those meetings pertain more to the organizational aspects of your organization rather than to any recreational aspects of supporting and promoting N. You also stated in your May , 20 , letter that you have not conducted any face-to-face meetings.

In response to our repeated requests that you explain how your members will make personal contact with each other or commingle face-to-face, you responded only that your members "through the exclusive access to the forum have the ability to contact other members via private messages [through the forum]; email each other and/or post a comment in the forum for other members to reply." Responding further, you stated, "With regards to face-to-face contact, [you are] working hard to establish a day in which we can all gather together. Schedule conflict are not easy to overcome. Most of the members already know each other personally." You also did not respond to our request that you provide a statement detailing any other characteristics of your organization that illustrate the existence of face-to-face personal contacts, commingling, or fellowship among your members.

Commingling is a necessary and material part in the life of an organization exempt under section 501(c)(7) of the Code and is deemed present if such things as meetings, gatherings, and regular facilities are evident. See, Rev. Rul. 70-32, supra, and Rev. Rul. 74-30, supra. Face-to-face interaction is important for members of a social club. Organizations that do not afford opportunities for this personal contact among members are not entitled to exemption under section 501(c)(7), even though they may be organized not for profit with no part of their earnings inuring to the benefit of shareholders. See, Rev. Rul. 55-716, supra. In all, you have not established that you will actually have any formal meetings, gatherings, recreational events, or other activities that involve actual personal contact among or between your members. You also did not establish that you had any regular facilities at which your members meet. While your members do interact through your members' only forum on your website, this is the only means of membership interaction that you have established. Thus, it is clear that fellowship and commingling do not constitute a material part of the life of your organization, as required by section 501(c)(7).

Moreover, you are entirely an internet-based organization and your website is open to the general public. Because of the very nature of the internet and its public access, it is impossible

to determine that your website will serve only your membership, a limited group of individuals. While your members can meet online in your members' only forum, your website is open to the general public "with the intention of reaching out to the general public." Thus, rather than having a limited membership as required by section 501(c)(7) of the Code (See, Rev. Rul. 74-30, supra), nonmembers are also allowed to participate in your activities, and they are even encouraged to do so.

Strictly construing section 501(c)(7) of the Code, as urged by legislative history (see, United States v. Fort Worth Club of Fort Worth Texas, supra, we conclude that you lack the section 501(c)(7) requirements of having personal contacts, commingling, and fellowship among your members. See, Rev. Rul. 58-589, supra, Rev. Rul. 70-32, supra, and Rev. Rul. 74-30, supra. Thus, you lack sufficient indicia of a "club" for purposes of qualifying for exemption under section 501(c)(7).

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(7) of the Code and you must file federal income tax returns.

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, over the signature of one of your principal officers or directors:

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 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
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