



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201802018**
Release Date: 1/12/2018
UIL Code: 501.04-00

Date: October 18, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(4) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: June 28, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
C = Date of formation
D = Geographic area
E = Political party
f dollars = Amount
g dollars = Amount
h dollars = Amount
j dollars = Amount
k dollars = Amount

UIL:

501.04-00

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(4) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under Section 501(c)(4) of the Code? No, for the reasons stated below.

Facts

You were formed as a nonprofit corporation under the laws of the state of B on C. Your purposes as set out in your Articles of Incorporation are to promote the general welfare of your members, party government, and community. You also consider persons seeking public office, preference of such persons, and you participate in projects and endeavors that are for the betterment of your community, government, and fellow men.

Your Bylaws state that your object shall be to promote the political and social welfare of your membership, the community of D and vicinity. Your Bylaws also reiterate the purposes outlined in your Articles of Incorporation.

You are organized on a membership basis. All members must be registered members of the E political party within B. Any registered E voter in B may become a candidate for membership. Such candidate must be vouched for by a member in good standing and voted upon at a regular meeting. Continuance of membership is at the sole discretion of the Board of Directors.

In furtherance of your purposes you are engaged in the following activities:

1. You conduct bingo once a week. This includes traditional bingo and substantially similar variations, as well as instant bingo. The events take place at a local veterans' facility and are open to the public. They are made known to your members at your monthly meetings and via your monthly newsletter. The veterans' organization also advertises the bingo by putting it on their calendar. The events are conducted by two paid staff members and one volunteer. One compensated staff person is a member operates and coordinates the bingo. The other compensated staff person is a non-member. The volunteer is also a non-member. One person is assigned the responsibility of handling the instant bingo. Food and beverages are available at the events, but you are not involved as the veterans' organization handles all food and beverage sales. You estimate that you spend 21 hours a week on bingo.

Bingo is legal in the locality where your events take place if conducted for charitable and other nonprofit purposes. You have the requisite gaming licenses from the county for both bingo and instant bingo.

Net bingo proceeds are used mainly to provide local college and high school scholarships and, to a much lesser extent, to support other community needs as they arise. Amounts not used in one year are kept in the bingo account (a separate account used only for bingo revenues and expenditures) for distribution in the following year. If you should dissolve, any remaining funds in the bingo account would go into the endowment fund of the local community college.

A large portion of your bingo receipts are paid out as bingo prizes. The payout percentage from bingo was about % and % for the last two years, respectively. Other direct costs (e.g., payroll, rent, supplies and equipment) of conducting bingo remained much the same over the two years and consumed about % of the bingo receipts each year. Approximately % of your bingo revenue was expended for scholarships each year for the last two years.

Scholarships are not limited to your members or their children. The applications are reviewed by the board members and the qualified candidates then receive a pro-rata portion of the money set aside for scholarships for the year. Applications are distributed to area schools. The program is also publicized (and applications are made available) at your bingo games, as well as promoted by your members to potential applicants and mentioned in your monthly newsletter. The number of awards depends on the amount of funds available. Awards are usually f dollars each for college students and g dollars each for high school students.

2. You also conduct annual or semi-annual bull roasts. Tickets are sold to those who wish to attend the events, which serve food and drinks and have live music. An estimated 83 hours per year are spent to conduct this activity.
3. You also vet/endorse political candidates and provide political fundraiser tickets for members. You consider the candidacies of any persons seeking public office or the preference of such persons. They are invited to your monthly meetings. Your board of directors then decides whether to endorse the candidate. If your board decides to do so, the endorsement is publicized.

You also purchase tickets to political fundraising events. Tickets are purchased using funds from your membership dues and the net income from the bull roasts. They are then given out to your members at

membership meetings via a raffle mechanism, whereby each member present at the meeting receives a raffle ticket and the randomly selected winners then receive tickets to the fundraiser events.

You estimate that you spend 3 hours a month on these activities. Your expenditures for these tickets have more than doubled over the last few years and were h dollars in the most recent year.

4. You also hold monthly membership meetings and produce a monthly newsletter. During your meetings you discuss, coordinate, and report on your operations and activities. Members are welcome to bring guests. You also publish a newsletter to communicate your activities and to serve as a forum for the exchange of views. Editorials on political topics may be included, as well as articles from members on matters pertaining to your mission.

Gross receipts from bingo make up the bulk of your revenues. In your most recently reported two years, bingo revenue was j dollars one year (more than half of which was from instant bingo) and k dollars in the subsequent year (more than % of which was from instant bingo). Your only other revenue comes from your bull roasts and from annual membership dues.

Law

Section 501(c)(4) of the Code provides for the exemption from federal income tax of organizations not organized for profit but operated exclusively for the promotion of social welfare.

Treasury Regulation Section 1.501(c)(4)-1(a)(2)(i) provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.

Treas. Reg. Section 1.501(c)(4)-1(a)(2)(ii) provides that the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

Rev. Rul. 66-179, 1966-1 C.B. 139, compares the requirements for qualification under Sections 501(c)(3), (4), (5), and (7). With regard to Section 501(c)(4), it indicates that conducting substantial social activities for the benefit, pleasure, and recreation of members would not preclude exemption under Section 501(c)(4), so long as such activities do not constitute the organization's primary activity. It may be inferred from this that the promotion of "social welfare" (i.e., the common good of civil society) does not include the conduct of "social" activities (i.e., activities for the recreational and personal enjoyment of private individuals), since the latter cannot constitute a Section 501(c)(4) organization's primary activity.

Rev. Rul. 68-45, 1968-1 C.B. 259, describes a veterans' organization which engages in social welfare activities traditional to such organizations but whose main funding comes from the conduct of bingo games open to the general public. Rev. Rul. 68-45, 1968-1 C.B. 259 and Rev. Rul. 74-361, 1974-2 C.B. 159 provide that whether an organization is primarily engaged in promoting social welfare is a facts and circumstances determination. Relevant factors include the manner in which the organization's activities are conducted; resources used in conducting such activities, such as buildings and equipment; the time devoted to activities (by volunteers as

well as employees); the purposes furthered by various activities; and the amount of funds received from and devoted to particular activities.

Rev. Rul. 81-95, 1981-1 C.B. 332, considered the effect of engaging in political campaign activities on a Section 501(c)(4) organization. The ruling concludes that an organization may carry on lawful political activities and remain exempt under Section 501(c)(4) of the Code as long as it is primarily engaged in activities that promote social welfare.

In Help The Children, Inc. v. Commissioner, 28 T.C. 1128 (1957), the court held that an organization engaged in fund-raising activities through operation of bingo games and whose actual charitable contributions consisted of contributions to charitable institutions of insubstantial amounts when compared to its gross receipts from operation of bingo games, did not qualify for exemption under Section 501(c)(3).

Smith-Dodd Businessman's Association v. Commissioner, 65 T.C. 620 (1975), states that "[t]he operation of bingo games for the production of income is a trade or business."

Julius M. Israel Lodge of B'nai B'rith No. 2113 v. Commissioner, 98 F.3d 190 (1996), held that instant bingo did not constitute "game of bingo" within the meaning of the statute excluding bingo games from unrelated business income tax.

Application of law

You are not operated exclusively for the promotion of social welfare within the meaning of Section 501(c)(4) of the Code because you are not primarily engaged in activities that promote social welfare.

Conducting bingo activities does not promote social welfare, as described in Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i). Bingo accounts for the majority of your time expended in terms of staff/volunteer work hours and also generates your highest gross revenue. As discussed in Smith-Dodd Businessman's Association, bingo, and gaming in general, is normally a commercial trade or business. Bingo is intrinsically recreational in nature and does not promote any Section 501(c)(4) purpose. Furthermore, more than half of your annual bingo proceeds come from instant bingo, which is considered an unrelated trade or business activity, as described in Julius M. Israel Lodge.

You are distinguished from Rev. Rul. 68-45, where bingo activities are clearly secondary to the conduct of a well-established social welfare program. Unlike the organization in this ruling, you do not have a distinct social welfare program.

Although bingo may be a means of raising funds for worthy causes, the amounts of gaming proceeds that you have available for scholarship grants and other community welfare distributions have averaged less than five percent of your gross gaming receipts annually. As in Help the Children, the fact that so little of your gaming revenue has ultimately been used for community benefit indicates that it is not conducted for social welfare purposes; rather, it is incidental to recreational purposes.

Your vetting and endorsement of candidates for the E political party and purchasing of tickets to political fundraisers aid the political campaign function of the E party. These activities help the E party select viable candidates and promote the visibility of such candidates. These activities constitute political campaign intervention and are not in furtherance of social welfare purposes as described in Treas. Reg. Section

1.501(c)(4)-1(a)(2)(ii). As explained in Rev. Rul. 81-95, it is permissible to conduct political campaign intervention activities as long as your primary purpose is one that furthers a social welfare purpose. Your primary activity is conducting bingo, which is also not a social welfare purpose. Therefore, you do not qualify for exemption under Section 501(c)(4) of the Code.

You also conduct bull roast events, which are social events for your members. In addition, they also serve to raise funds that are used, at least in part, to purchase political fundraiser tickets. These events are social and political in nature, neither of which promotes social welfare. Although social and political activities will not preclude exemption under Section 501(c)(4) of the Code if they aren't your primary activity, your primary activity is conducting bingo, which in and of itself is not a Section 501(c)(4) purpose. See. Rev. Rul. 66-179. The social and political activities you conduct, in addition to your substantial bingo activities, further affirm your preclusion under Section 501(c)(4).

Conclusion

You do not meet the requirements of Section 501(c)(4) of the Code because you are not operated primarily for the promotion of social welfare. Your social welfare activities are incidental to your overall social, recreational and political campaign intervention purposes. Therefore, you are not exempt under Section 501(c)(4).

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

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

For authorized representatives:

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

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

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

U.S. mail:

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

Street address for delivery service:

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

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892