

Internal Revenue Service
Appeals Office
Royal Palm One, Suite 350
1000 South Pine Island Road
Plantation, FL 33324

Department of the Treasury

Employer Identification Number:

Person to Contact:

Number: **201927023**
Release Date: 7/5/2019

Employee ID Number:

Tel:

Fax:

Date: April 9 2019

UIL: 7428.00-00

A = Name

B = Address

Certified Mail

Dear

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Section 501(c)(7) of the Code.

We have hereby revoked the favorable determination letter to you dated _____ and you are no longer exempt under Section 501(a) of the Code effective as of the date of this letter.

We made the adverse determination for the following reason(s):

_____ is not an organization described in section 501(c)(7) of the Internal Revenue Code because less than substantially all of its activities are for pleasure, recreation, and other nonprofitable purposes, and at least part of its net earnings inure to the benefit of private shareholders. _____ is not operated exclusively for exempt purposes, is not supported by membership fees, dues, and assessments, and its net earnings inure to the benefit of private shareholders. Under Treasury Reg. §1.501(c)(7)-1, a social club must be operated exclusively for pleasure, recreation, and other nonprofitable purposes, must generally be solely supported by membership fees, dues, and assessments, and its net earnings must not inure to the benefit of private shareholders.

You're required to file Federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return, OR 1041, U.S. Income Tax Return for Estates and Trusts. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in either:

- United States Tax Court,
- The United States Court of Federal Claims,
- The United States District Court for the District of Columbia.

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file petition for declaratory judgment under section 7428 of the Code.

Please refer to the enclosed Publication 892, How to Appeal an IRS Determination on Tax - Exempt Status, for more information about the Appeals process.

You also have the right to contact the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You If you qualify for TAS assistance, which is always free. TAX will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS 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.

If you have any questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Cc:
Enclosure:



**Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
Exempt Organizations Examinations**

Date: **August 8, 2017**

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Manager's Name/ID Number:

Manager's Contact Number:

Response due date:

Certified Mail – Return Receipt Requested

Dear :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(7) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(7).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't 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
Office of the Taxpayer Advocate

For additional information

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,

Maria D. Hooke
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service	
Explanation of Items		
Name of Taxpayer		Year/Period Ended
XXXXX		20XX

Proposed Revocation

Issue #1

Should XXXXX continue to be exempt under Internal Revenue Code Section 501(c) (7) when all of the organization's income was generated from two sources of income rents from non-member as well investment income?

Issue #2

Does XXXXX meet the commingling aspect requirement under section 501(c) (7) of the Internal Revenue Code?

Issue #3

If the organization's only source of income is derived from leasing and rental activities does the organization continue to qualify for exemption?

Issue #4

Does XXXXX meet the title holding corporation provisions under section 501(c)(2) of the Internal Revenue Code?

Issue #5

Should the proposed date of revocation be changed from August 1, 20XX to the date the report is issued?

Facts:

XXXXX was granted exemption in August of 19XX as an organization described in Section 501(c)(7) of the Internal Revenue Code .

Per a review of the articles of incorporation, as well as the organization's 1024 application the purpose of XXXXX is to finance, construct, maintain, own and be the beneficiary of any land trust which owns a fraternal or dormitory type lodging at XXXXX University and any or all lawful business for which corporations may be incorporated. Most of the articles focus on maintenance and operation of a fraternity house. However, XXXXX itself is not a fraternity or sorority.

Form 886A	Department of the Treasury - Internal Revenue Service	
Explanation of Items		
Name of Taxpayer		Year/Period Ended
XXXXX		20XX

While touring the facility, it was noted that XXXXX leased its property to XXXXX and XXXXX Fraternity. These are two separately incorporated entities. XXXXX paid for repairs, taxes, and utilities for the maintenance of these properties.

While conducting the initial interview, reviewing the general ledger, and profit and loss statement, it was noted that the only two sources of income received by XXXXX was interest income and rents from undergraduate members from XXXXX and XXXXX Fraternity. XXXXX and XXXXX Fraternities are not members of XXXXX. XXXXX did not receive income from membership dues or any other sources of income that would be considered exempt function income. All of the income was generated from the general public.

XXXXX did not provide a newsletter, calendar, or minutes pertaining to the organization's activities and there did not appear to be any structured activities provided to the students by XXXXX during a review of the books and records for fiscal periods ending July 31, XXXX, and July 31, XXXX. One of the responses to IDR response number 1 dated 12/17/20XX indicated that "although XXXXX Corporation has historically published newsletters and other communications for distribution among members (and the members of the organization residing in the chapter houses owned by XXXXX) XXXXX did not publish a communications during fiscal year ending July 31, 20XX.

Also while reviewing the expenditures, it was noted that minimal expenditures were incurred for social, educational and recreational activities as most of this was attributable to \$: travel related expenses. The remainder of the expenses incurred were relating to the maintenance and operation of a rental property. The total amount of expenditures incurred for this purpose amounted to \$XXXXX or over 95% of the expenses incurred by XXXXX were for repairs and maintenance.

The organization suggested that I have an interview with XXXXX son A XXXXX. Upon conducting the interview over the phone it was noted that he lived in another state and had only come to the campus three or four times a year. Most of the discussion pertaining to the day to day operations came over the telephone and that none of the officers of the organization actually lived in the XXXXX area. See Exhibit 2 for detail.

In order to receive additional clarification with respect to whether XXXXX met the commingling requirements under Internal Revenue Code Section 501(c)(7) IDR number 2 was issued 12/15/20XX requesting that the organization provide documentation regarding the activities conducted by XXXXX besides the maintenance and operation of a fraternity house. The IDR issued that the information document response could include: A) Information relative to scholarship B) Mentor programs, C) Fund-raising D) and social activities.

Form 886A	Department of the Treasury - Internal Revenue Service	
Explanation of Items		
Name of Taxpayer		Year/Period Ended
XXXXXX		20XX

The response dated 2/20/20XX reflected that the organization met in person maybe three to four times a year with the majority of the meeting occurring on line. Commingling of members is a material part in the life of an organization. Commingling is present if such things as meetings, gatherings and regular facilities are evident with respect to the membership.

Again it appears that the predominant activity is the leasing and rental of a property in which all of the renters happen to be fraternity members. During a review of line 19 of the forms 990 for tax years ending July 31, 20XX and July 31, 20XX it was noted that excess revenue over expenses amounted to \$XXXXX and \$XXXXX respectively during these tax years. Also, the net assets of fund balances increased from \$XXXXX to \$XXXXX at the end of fiscal period ending July 31, 20XX. The organization did not turn any of this income over to another exempt organization, which is generally required in order to meet Internal Revenue Code Section 501(c)(2).

Furthermore as mentioned above, the organization was given a determination letter in August of 19XX. The 1024 application and Form 990 for tax year ending July 31, 20XX indicated that the organization's primary purpose was the operation and maintenance of a fraternity house. The stated purpose has not changed since the organization was granted exemption. During the examination I did not note any social, recreational or educational activities that were conducted by this organization

The organization has been operating in this manner and the IRS approved the organization's exempt status. Due to the fact that the IRS approved this activity it did not appear that the correct course of action would be to propose revocation retroactively to the determination letter which is August of 19XX, but the effective date of revocation should be the first day of the first year under examination.

Law:

Internal Revenue Code Section 501(c) (7) describes organizations organized and operated exclusively for social, pleasure and recreational purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

Internal Revenue Code Section 512(3) discusses special rules applicable to organizations described in paragraph (7) (9) (17) and (20) of section 501(c) the term unrelated business income means the gross income (excluding any exempt function income) less the deductions allowed by this chapter.

Exempt Function Income for purposes of this sub-section means the gross income from: dues, fees charged, or similar amounts, paid by members of the organization or consideration for providing goods and services in furtherance of the purposes constituting exemption.

Form 886A	Department of the Treasury - Internal Revenue Service	
Explanation of Items		
Name of Taxpayer		Year/Period Ended
XXXXX		20XX

Public Law 94-568 amended IRC 501 to reflect a two-fold change under IRC. First it made it clear that 501(c) (7) organizations may receive some investment income without losing its exemption. Second it permits a higher level of non-member use of club facilities.

Public Law 94-568 defines gross receipts as those receipts from normal and usual activities of a club including charges, admission fees, membership dues fees, assessments, investment income, but excluding initiation fees and capital contributions.

Public Law 94-568 also states that it its intended that Social Clubs can receive up to 35% of its gross income from investments from outside sources of their memberships without losing its tax-exempt status and up to 15% of its income cannot be received from the general public.

Revenue Ruling 67-428 holds that an organization whose membership consists of entirely of artificial entities does not qualify for exemption. Revenue Ruling 67-428 emphasizes that artificial entities are incapable of producing the personal contacts and fellowship.

Corporate members of a club are not the kind of members contemplated by the statute, a club in permitting such a type of membership, is such as the same dealing with corporations that have no connection with the club.

Revenue Ruling 55-716 provides evidence with respect to definition of commingling. In this instance the only activity done by the 501(c)(7) was the operations and maintenance of the television antenna system providing television antenna service to its members. In this instance fellowship does not constitute a material part of the operations. The response provided in IDR 2 only reflected two instances of personal contact. All of the rest of the meetings were held over the telephone.

In Revenue Ruling 69-635 the principal purpose of this organization is rendering automobile services to its members there is no significant commingling with respect to this activity and therefore the membership did not qualify for exemption under Internal Revenue Code Section 501(c)(7) .

Revenue Ruling 68-168 indicates that a non-profit organization that leases its building lots to its members on a long-term basis is not exempt.

Revenue Ruling 64-118 indicates that an organization does not qualify for exemption as an educational organization where its primary activity is to furnish on a rental basis a chapter house to a fraternity house composed of students.

Internal Revenue Code 501(c)(2) exempts from federal income tax corporations organized for the exclusive purpose of holding title to property, collecting income therefrom and turning over the entire amount thereof, less expenses to an organization which itself is exempt under IRC 501(a).

Form 886A	Department of the Treasury - Internal Revenue Service	
Explanation of Items		
Name of Taxpayer		Year/Period Ended
XXXXX		20XX

Section 601.201(n)(3)(ii) of the Treasury Regulations provides that a taxpayer may continue to rely on a determination letter, provided that the taxpayer acts within the scope for which it received its exemption. Section 7805(b)(8) of the Internal Revenue Code of 1986, as amended (the Code") provides that the Secretary of the Department of Treasury may prescribe the extent to which any ruling relating to the Internal Revenue Laws shall be applied without retroactive effect. To this end, Section 12.03 of Revenue Procedure 2017-5 indicates that revocation of a determination letter may be retroactive when: (1) there has been a change in applicable law (2) the organization omitted or misstated material information in its organizational documents or its exemption application. (3) the organization operated in a manner materially different from that originally represented in its application for exemption.

Section 11.06 of Revenue Procedure 2017-1 indicates that revocation will not be retroactive when: (1) there has been no change in applicable law (2) there was a letter ruling (i.e. a determination) that was originally issued for a proposed transaction, and (3) the taxpayer acted in good faith in relying on the letter ruling.

Taxpayer's Position

XXXXX believes that the income that it received is considered exempt function income and that none of the income is taxable. The taxpayer and his representatives indicate that the organization's activities are consistent with its operations as stated in its Form 1024.

Exhibit D of Form 1024 indicated that XXXXX 's predominant activities were owing a fraternity house on the campus of XXXXX University and leasing the house to a fraternity or sorority recognized as exempt under Internal Revenue Code Section because XXXXX provides a physical space that allows the fraternity or sorority lessee to engage in communal and social activities and therefore the income is considered exempt function income.

XXXXX proposed to amend its organizational documents so that the undergraduate members of XXXXX corporate members are also members of XXXXX. The organization indicated that it would incorporate this language in the by-laws.

As indicated in the response in the December 13, 20XX letter and more specifically, the verified statement of Michael XXXXX that was attached to the December 13th letter and indicated in the response provided to Information Document Request Number 2, there were several instances of commingling among XXXXX's members. The response to Information Document request letter listed 24 instances of personal contact during the requested time period, some of which involved multiple instances of commingling.

Form 886A	Department of the Treasury - Internal Revenue Service	
Explanation of Items		
Name of Taxpayer		Year/Period Ended
XXXXX		20XX

XXXXX's operations are consistent with IRS guidance on organizations that are exempt pursuant to code section 501(c)(7). For instance, Revenue Ruling 64-118 describes an organization that is "organized for the purpose of aiding and assisting in education of students affiliated with a fraternity at college or University. In this regard, the primary activity of the organization is the operation and maintenance of a fraternity house, on a rental basis, for the use and benefit of the members of a local chapter of a fraternity. The taxpayer believes under proper circumstances be classified as an exempt organization.

XXXXX's operations are consistent with IRS guidance on organizations that are exempt pursuant to code section 501(c)(7). For instance, Revenue Ruling 64-118 describes an organization that is "organized for the purpose of aiding and assisting in education of students affiliated with a fraternity at college or University. In this regard, the primary activity of the organization is the operation and maintenance of a fraternity house, on a rental basis, for the use and benefit of the members of a local chapter of a fraternity. The taxpayer believes under proper circumstances be classified as an exempt

XXXXX believes that it should not be subject to retroactive revocation because it was operating in a manner it described in its Form 1024 application and that it acted in good faith in relying on its determination letter.

Specifically, Exhibit H of XXXXX Form 1024 acknowledged that the undergraduate members living in XXXXX fraternity houses were not members of XXXXX, but rather were members of XXXXX corporate members. In 19XX the Internal Revenue Service carefully considered XXXXX's operations and issued a determination letter ruling that such operations are exempt activities described in Code Section 501(c)(7) and now twenty-three years later, XXXXX has not deviated in any significant way from activities described in its application for exemption and therefore XXXXX's activities deemed to be in compliance with its 19XX determination and XXXXX should be granted relief under Code section 7805(b) from retroactive revocation of its exempt status.

Government's Position

None of the rents came from the XXXXX or XXXXX or the individual members of XXXXX. All of the rent income came from individuals that were not members of XXXXX. As a result the organization received a 100% of its income from the general public. Also in various correspondences provided by XXXXX acknowledged that XXXXX undergraduate members living in the fraternity are not officially members of XXXXX.

The organization cannot retroactively amend its by-laws to conform to 501(c)(7) status by changing the language to indicate that XXXXX and XXXXX are members of XXXXX.

Form 886A	Department of the Treasury - Internal Revenue Service	
Explanation of Items		
Name of Taxpayer		Year/Period Ended
XXXXXX		20XX

Face to Face interaction is important for members of a social club. Organizations that do not afford opportunities for personal contact on a recurring basis do not meet the commingling requirements outlined in Revenue Ruling 55-716.

Based on a review of the 990 these other educational activities were not identified on the Form 990 for tax year ending July 31, 20XX and July 31, 20XX. Only after IDR number was issued did the organization identify the fact the organization met to discuss civic and educational activities. However, the organization donated minimal time to these activities and did not record any activities in the minutes.

After taking income from expenses, the organization had net income of \$XXXXX and increased its total net assets to \$XXXXX in which none of the income was turned over to another tax-exempt entity.

I agree that retroactive revocation should not occur based on the fact that the organization's activities have not materially changed since it was granted exemption. However, the organization did not qualify for exemption in 19XX and does not qualify in tax years ending July 31, 20XX and July 31, 20XX. Revocation is being proposed for the first day of the first tax year under examination, Therefore revocation will only affect tax years ending July 31, 20XX and July 31, 20XX.

Conclusion

XXXXX does not qualify for exemption for the following reasons:

- 1) All of the organization income came from the general public.
- 2) XXXXX does not meet the commingling aspect of Internal Revenue Code Section 501(c)(7)
- 3) The organization cannot meet exemption when primary activity as 501(c)(7) is leasing of a fraternity house.
- 4) XXXXX does not turn its income over to another exempt organization and does not meet IRC Section 501(c)(2).
- 5) The organization's activities are not consistent with 501(c)(7) purposes and therefore revocation cannot start the date that the report was issued.

The effective date of revocation will be August 1, 20XX, the first day of the first tax year under Examination.

ALTERNATIVE ISSUE TO REVOCATION /UNRELATED BUSINESS INCOME

If revocation is not upheld a 990-T should have been filed for tax year ending July 31, 20XX.

Form 886A	Department of the Treasury - Internal Revenue Service	
Explanation of Items		
Name of Taxpayer		Year/Period Ended
XXXXXX		20XX

Adjustment Number 1 Increase in taxable income

20XX

Unrelated Business income 13 per return

\$0.00

Unrelated Business Income per Exam

\$

=====

Adjustment

\$

Facts

During the examination, the organization filed to report its income from non-member income on Form 990-T for tax period ending July 1, 20XX, none of this income was considered exempt function income and therefore 100% taxable.

Law

Internal Revenue Code Section 512(a) defines unrelated business income as income derived by an organization from any unrelated trade or business (as defined in Code Section 513) regularly carried on by it, less the allowable deductions directly connected with the carrying on of such trade or business.

Internal Revenue Code Section 513(a) the term unrelated business income means in the case of an organization subject to tax imposed by section 511 any trade or business the conduct which is not substantially related (aside for the needs of such organization for the income of funds or the use it makes of the profits derived.)

Internal Revenue Code Section 512(b)(3) discusses special rules applicable to organizations described in paragraph (7) (9) (17) and (20) of section 501(c) the term unrelated business income means the gross income (excluding any exempt function income) less the deductions allowed by this chapter.

Exempt Function Income for purposes of this sub-section means the gross income from: dues, fees charged, or similar amounts, paid by members of the organization or consideration for providing goods and services in furtherance of the purposes constituting exemption.

Taxpayer's position

Form 886A	Department of the Treasury - Internal Revenue Service	
Explanation of Items		
Name of Taxpayer		Year/Period Ended
XXXXXX		20XX

The organization believes the income from rents it considered exempt function income and thus is excludable as taxable income.

Government's Position

Income from rents is not considered exempt function income and is thus taxable.

Conclusion

All the income received by the organization is considered taxable income.

Adjustment number 2 increase in expenses line.

Facts:

All of the expenses associated with the activities conducted by the organization are considered rental expenses with the exception of the \$XXXXX for travel related expenses for conferences as well as to meet with the students of the fraternity. Therefore \$XXXXX can be used to offset unrelated business income.

Law

Internal Revenue Code Section 512(b) allows for deductions that are directly connected to the income generating activities

Conclusion

Expenses that are directly related to the rental expenses can be used to offset unrelated business income.

Adjustment number 3 increase in specific deduction allowance

Facts:

If the organization generates any unrelated business income the organization is entitled to a \$ specific deduction allowance.

Law

Explanation of Items

Name of Taxpayer

Year/Period Ended

XXXXX

20XX

Internal Revenue Code Section 512(b) allows a specific deduction of \$ _____ to be offset against unrelated business income.

Conclusion:

The organization is allowed a specific deduction allowance of \$ _____