



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1100 Commerce Street, MC 4920DAL
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **202110040**
Release Date: 3/12/2021

UIL: 501.07-00

Date: October 26, 2020

Taxpayer ID Number:

Form:

For Tax Period(s) Ending:

Person to Contact:

Identification Number:

Telephone Number:

Fax Number:

CERTIFIED MAIL – Return Receipt Requested
LAST DAY FOR FILING A PETITION WITH THE TAX COURT:

Dear :

This is a final determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(7) for the tax period(s) above. Your determination letter dated October 19XX is revoked.

Our adverse determination as to your exempt status was made for the following reasons:

You have not established that you are operated substantially for pleasure and recreation of your members or other non-profitable purposes and no part of the earnings inures to the benefit of private shareholder within the meaning of IRC Section 501(c)(7). You have made your recreational and social facilities available to the general public.

Organizations that are not exempt under IRC Section 501 generally are required to file federal income tax returns and pay tax, where applicable. For further instructions, forms, and information please visit www.irs.gov.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of IRC Section 7428 in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the

District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892. You may write to the courts at the following addresses:

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

U.S. Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

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

Processing of income tax returns and assessments of any taxes due will not be delayed if you file a petition for declaratory judgment under IRC Section 7428.


You may be eligible for help from 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. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 1-877-777-4778.

Taxpayer Advocate assistance can't be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

You can get any of the forms or publications mentioned in this letter by calling 800-TAX-FORM (800-829-3676) or visiting our website at www.irs.gov/forms-pubs.

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.

Sincerely,



Sean E. O'Reilly
Director, Exempt Organizations Examinations

Enclosures:
Publication 892



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

Date:
August 5, 2020
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:
ID number:
Telephone:
Fax:
Hours:

Manager's contact information:

Name:
ID number:
Telephone:
Response due date:

CERTIFIED MAIL – Return Receipt Requested

Dear :

Why you're receiving this letter

We enclosed a copy of our audit report, Form 886-A, Explanation of Items, explaining that we propose to revoke your tax-exempt status as an organization described in Internal Revenue Code (IRC) Section 501(c)(7).

If you agree

If you haven't already, please sign the enclosed Form 6018, Consent to Proposed Action, and return it to the contact person shown at the top of this letter. We'll issue a final adverse letter determining that you aren't an organization described in IRC Section 501(c)(7) for the periods above.

After we issue the final adverse determination letter, we'll announce that your organization is no longer eligible to receive tax deductible contributions under IRC Section 170.

If you disagree

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.
3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to sign a consent to extend the period of limitations for assessing tax. This is to allow the

IRS Appeals Office enough time to consider your case. For your protest to be valid, it must contain certain specific information, including a statement of the facts, applicable law, and arguments in support of your position. For specific information needed for a valid protest, refer to Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

Fast Track Mediation (FTM) referred to in Publication 3498, The Examination Process, generally doesn't apply now that we've issued this letter.

4. Request technical advice from the Office of Associate Chief Counsel (Tax Exempt Government Entities) if you feel the issue hasn't been addressed in published precedent or has been treated inconsistently by the IRS.

If you're considering requesting technical advice, contact the person shown at the top of this letter. If you disagree with the technical advice decision, you will be able to appeal to the IRS Appeals Office, as explained above. A decision made in a technical advice memorandum, however, generally is final and binding on Appeals.

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 adverse determination letter.

Contacting the Taxpayer Advocate Office is a taxpayer right

The Taxpayer Advocate Service (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. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

For additional information

You can get any of the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

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

Sincerely,

Denise Gonzalez for

Sean E. O'Reilly
Director, Exempt Organizations
Examinations

Enclosures:
Form 886-A
Form 6018
Publication 892
Publication 3498

| | | |
|---------------------------------|---|--|
| Form 886-A (May 2017) | Department of the Treasury – Internal Revenue Service Explanations of Items | Schedule number or exhibit Form 990 |
| Name of taxpayer | Tax Identification Number (last 4 digits) | Year/Period ended December 31, 20XX |

ISSUE

Whether the organization continues to qualify for exemption under Internal Revenue Code section 501(c)(7) when its facilities is open to the general public?

FACTS

Organizational Structure

The (the “ ”) was incorporated in September 26, 19XX in the state of . The golf course and clubhouse is located at ,

The operates a 0-hole golf course, a restaurant with a bar, and a pro shop which are all open to the general public. The income received by the includes membership dues, green fees, cart rentals, bar sales, and pro shop sales. The members pay yearly membership dues and meal tickets are included. The operates seasonally and for the tax period under examination, December 31, 20XX, the conducted operations from May 12, 20XX through October 14, 20XX.

Form 990

The was examined for tax year ending December 31, 20XX. The name of the organization listed on Form 990 is:

The mission or most significant activities stated on the page 1, Part 1, *Summary*, line 1, *Briefly describe the organization’s mission or most significant activities*, of the Form 990 is: Social and for members and the public in , and

The mission is described on page 2, Part III, *Statement of Program Services and Accomplishments*, line 1, *Briefly describe the organization’s mission*, which states, “Operation of the in conjunction with the servicing the public and members in the , , and areas.”

On Schedule R, *Related Organizations and Unrelated Partnerships*, Part V, *Transactions with Related Organizations*, of the Form 990 indicates that the related organization, , was reimbursed for \$0. The stated method of determining this amount involved was the allocation based on revenues and fixed assets.

[Continued on next page]

| | | |
|---------------------------------|---|--|
| Form 886-A (May 2017) | Department of the Treasury – Internal Revenue Service Explanations of Items | Schedule number or exhibit Form 990 |
| Name of taxpayer | Tax Identification Number (last 4 digits) | Year/Period ended December 31, 20XX |

Initial Appointment

The initial interview was held on August 13, 20XX at where the books and records are located as stated in the Form 990. The golf course and clubhouse restaurant is located at . The following individuals were present during the initial interview:

1. , Treasurer
2. , Power of Attorney (POA)

During the initial interview, the Treasurer explained that the related non-exempt entity, (the “ ”), is the main corporation that formed the . The Treasurer further clarified that the owns the clubhouse and the owns the land and storage units. Both the and share the same board members.

The Treasurer stated that the facilities are all open to the general public and indicated that there are established green fees posted on the website, , for a nonmembers use of the golf course. The clubhouse restaurant which includes a bar and lounge is also open to the general public. The Treasurer indicated that there are no records kept which distinguishes income and expenses between members, guests, or the general public for the use of the restaurant and bar. However, records distinguishing between member and nonmembers are kept for the rental of the hall for weddings and parties.

The Treasurer explained that both the and essentially operate as one organization, moreover, it is also perceived to be one organization as not many people are aware of the existence of the . Furthermore, the Treasurer stated that if the bank accounts of either the or the are low on funds, checks will be issued out of the bank account with the available funds. For example, checks issued by the may be written out to pay for the expenses of the and vice versa.

As explained by the Treasurer and the POA, the founders of the and incorporated the to report all the nonmember income on the Form 1120 for the to continue to qualify for its exempt status under section 501(c)(7) of the IRC. Income is allocated between the and the as follows:

| – Form 990 | – Form 1120 |
|---------------------------------|--------------|
| Membership Dues and Assessments | Cart Storage |
| Clubhouse Restaurant and Lounge | Green Fees |
| Investment Income | Tournaments |

| | | |
|---------------------------------|---|--|
| Form 886-A (May 2017) | Department of the Treasury – Internal Revenue Service Explanations of Items | Schedule number or exhibit Form 990 |
| Name of taxpayer | Tax Identification Number <i>(last 4 digits)</i> | Year/Period ended December 31, 20XX |

As explained by the POA, expenses are allocated between the _____ and the _____ using percentage of total revenues, percentage of fix assets, and percentage of course revenues.

Membership

The _____ membership is open to the public. The Treasurer stated that there are approximately 0 members. All members can vote. The membership covers the cost of green fees and includes meal tickets which can be used at the clubhouse restaurant and bar. The types of memberships listed on the 20XX membership application includes:

- Husband and Wife Membership
- Dependents
- Student Membership
- Long Distance Membership
- Single Membership
- Associate Membership
- Social Membership
- Cart Membership (single or family)

Meetings are held approximately once a month at the clubhouse, even during the off-season.

Facility

Revenue Agent conducted a tour of the golf course and clubhouse after the initial interview. The clubhouse building includes a Pro Shop, restaurant with a bar, a dining hall, and locker rooms. There were no member-only signs posted on the golf course nor the clubhouse.

Social and Recreational Activities

The _____ is a golf course that provides golfing for members and the general public. The membership dues for the use of the golf course also include meal tickets which can be used to purchase food and drinks at the clubhouse restaurant and bar. Members do not need to pay rent for the use of the hall for their events.

Website

The _____ website, _____, does not mention that the club is restricted for members only. Green fees are posted on the website which are paid by nonmembers with different rates such as Daily Greens Fee, Junior Rate, Thursday Special, Twilight Fee, and Power Cart Rentals.

The website also provides the hours of operations for the _____ restaurant and lounge. In addition, it also states the following:

- “Rental details for wedding receptions, class reunions and parties, please contact our facility manager...”
- “Details for corporate golf outings and charity tournaments, please contact ...”

| | | |
|---------------------------------|---|--|
| Form 886-A (May 2017) | Department of the Treasury – Internal Revenue Service Explanations of Items | Schedule number or exhibit Form 990 |
| Name of taxpayer | Tax Identification Number <i>(last 4 digits)</i> | Year/Period ended December 31, 20XX |

LAW

Internal Revenue Code (IRC)

IRC §501(c)(7) provides exemption from income taxes for clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

Treasury Regulations

Treasury Regulation section 1.501(c)(7)-1(a) further provides that in general, this exemption extends to social and recreation clubs which are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

Treasury Regulation section 1.501(c)(7)-1(b) states that a club which engages in business, such as making its social and recreational facilities available to the general public is not organized and operated exclusively for pleasure, recreation, and other purposes, and is not exempt under section 501(a). Solicitation by advertisement or otherwise for public patronage of its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes.

Prior to its amendment in 1976, IRC §501(c)(7) required that social clubs be operated exclusively for pleasure, recreation and other nonprofitable purposes. Public Law 94-568 amended the “exclusive” provision to read “substantially” in order to allow an IRC §501(c)(7) organization to receive up to 35 percent of its gross receipts, including investment income, from sources outside its membership without losing its tax-exempt status. The Committee Reports for Public Law 94-568 (Senate Report No. 94-1318 2d Session, 1976-2 C.B. 597) further states;

- (a) Within the 35 percent amount, not more than 15 percent of the gross receipts should be derived from the use of a social club’s facilities or services by the general public. This means that an exempt social club may receive up to 35 percent of its gross receipts from a combination of investment income and receipts from non-members, so long as the latter do not represent more than 15 percent of total receipts.
- (b) Thus, a social club may receive investment income up to the full 35 percent of its gross receipts if no income is derived from non-members’ use of club facilities.
- (c) In addition, the Committee Report states that where a club receives unusual amounts of income, such as from the sale of its clubhouse or similar facilities, that income is not to be included in the 35 percent formula.

| | | |
|---------------------------------|---|--|
| Form 886-A (May 2017) | Department of the Treasury – Internal Revenue Service Explanations of Items | Schedule number or exhibit Form 990 |
| Name of taxpayer | Tax Identification Number (<i>last 4 digits</i>) | Year/Period ended December 31, 20XX |

Revenue Procedure

Revenue Procedure 71-17, 1971 WL 26186, 1971-1 C.B. 683 sets forth guidelines for determining the effect gross receipts derived from use of a social club's facilities by the general public have on the club's exemption from federal income tax under IRC §501(c)(7) of the Code.

The club must maintain books and records of each such use and the amount derived therefrom. This requirement applies even though the member pays initially for such use. In each instance, the record must contain the following information:

1. The date;
2. The total number in the party;
3. The number of nonmembers in the party;
4. The total charges;
5. The charges attributable to nonmembers;
6. The charges paid by nonmembers;
7. Where a member pays all or part of the charges attributable to nonmembers, a statement signed by the member indicating whether he has been or will be reimbursed for such nonmember use and, if so, the amount of the reimbursement;
8. Where the member's employer reimburses the member, or makes direct payment to the club for the charges attributable to nonmembers, a statement signed by the member indicating the name of his employer; the amount of the payment attributable to the nonmember use; the nonmember's name and business or other relationship to the member; and the business, personal, or social purpose of the member served by the nonmember use.
9. Where a nonmember, other than the employer of the member, makes payment to the club or reimburses a member and a claim is made that the amount was paid gratuitously for the benefit of a member, a statement signed by the member indicating the donor's name and relationship to the member, and containing information to substantiate the gratuitous nature of the payments or reimbursement.

Exceptions to the record keeping requirements are:

1. Where a group of eight or fewer individuals, at least one of whom is a member, uses club facilities, it will be assumed for audit purposes that the nonmembers are the guests of the member, provided payment for such use is received by the club directly from the member or the member's employer.
2. Where 0 percent or more of a group using the club's facilities are members, it will likewise be assumed for audit purposes that the nonmembers in the group are guests of members, provided payment for such use is received by the club directly from one or more of the members or the member's employer.
3. Solely for purposes of 1 and 2, above, payment by a member's employer will be assumed to be for a use that serves a direct business objective of the employee-member.

| | | |
|---------------------------------|---|--|
| Form 886-A (May 2017) | Department of the Treasury – Internal Revenue Service Explanations of Items | Schedule number or exhibit Form 990 |
| Name of taxpayer | Tax Identification Number (last 4 digits) | Year/Period ended December 31, 20XX |

Where a club makes its facilities available to the general public to a substantial degree, the club is not operated exclusively for pleasure, recreation, or other non-profitable purposes.

Revenue Rulings

Revenue Ruling 58-589 examines the criteria for determining whether an organization qualifies for exemption under IRC §501(a) as an organization described in IRC §501(c)(7) of the Code. This ruling states it is clear under the foregoing regulations that a club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate, etc., may not be considered as being organized and operated exclusively for pleasure, recreation or social purposes. It is equally clear that the solicitation by advertisements or otherwise of public patronage of its facilities may be adverse to the establishment of an exempt status.

Revenue Ruling 60-324 states by making its social facilities available to the general public the club cannot be treated as being operated exclusively for pleasure, recreation or other non-profitable purposes.

Revenue Ruling 68-74 states that the activities of a taxable subsidiary of a social club (which club is otherwise exempt from Federal income tax under section 501(c)(7) of the Internal Revenue Code of 1954) are considered activities of the parent club for the purpose of determining whether the parent is engaging in business with the general public for profit.

Revenue Ruling 69-219 states that a social club that regularly holds its golf course open to the general public, charging established green fees that are used for maintenance and improvement of club facilities, is not exempt under section 501(c)(7) of the Code.

Court Case

United States v. Fort Worth Club of Fort Worth, Texas. 345 F.2d 52, (5th Cir. 1965), describes a § 501(c)(7) social club, through its wholly owned subsidiary, owned a 13 story building. The building was used in part by the club, and the remainder of the building was rented to commercial tenants. Each month, the subsidiary corporation turned over its income less expenses to the club. The club deposited these funds in its general bank account and drew on this account to pay expenses. The court held that the club was not organized and operated exclusively for social purposes, because, through a wholly owned subsidiary, the club was in the business of leasing office space to the public. The court said that the social club was attempting to accomplish indirectly what it could not accomplish directly—to derive income from dealings with the general public.

TAXPAYER'S POSITION

The Treasurer confirmed that the _____ activities are open to the general public. The Treasurer agrees that the _____ does not meet the requirements under section 501(c)(7) of the IRC.

| | | |
|---------------------------------|---|--|
| Form 886-A (May 2017) | Department of the Treasury – Internal Revenue Service Explanations of Items | Schedule number or exhibit Form 990 |
| Name of taxpayer | Tax Identification Number <i>(last 4 digits)</i> | Year/Period ended December 31, 20XX |

GOVERNMENT'S POSITION

As a result of the examination, the _____ fails to establish that it is a social and recreational club that qualifies for exemption from federal income tax under section 501(c)(7) of the IRC and section 1.501(c)(7)-1 of the Treasury Regulations because its facilities are open to the public.

Furthermore, the _____, was established to report all the nonmember income generated from activities to prevent the _____ from exceeding the nonmember income limitation threshold for organizations exempt under section 501(c)(7) of the IRC.

As stated by the Treasurer, the _____ and the _____ operated essentially as one organization and the Treasurer further stated that although each entity has its own respective bank accounts, checks may be written out from the _____ bank account to pay for _____ expenses if funds are low in the _____ bank account and vice versa. Both the _____ and _____ essentially operate as one entity.

The _____ and the _____ is similar to the organization described in Revenue Ruling 68-74, where a section 501(c)(7) social club was denied the use of a taxable subsidiary to profit from the operation of a commercial marina doing business with the general public.

The purpose of the _____ is similar to the organization in United States v. Fort Worth Club of Fort Worth. Texas. 345 F.2d 52, (5th Cir. 1965), where the social club attempted to accomplish what it could not accomplish directly—to derive income from dealings with the general public. Although the organizations described in Revenue Ruling 68-74 and United States v. Fort Worth Club of Fort Worth. Texas. 345 F.2d 52, (5th Cir. 1965) both had a parent and subsidiary relationship, the purpose of establishing that relationship is similar to the purpose for _____'s existence.

Revenue Ruling 58-589 reasons that a club which engages in business, such as making its social and recreational facilities available to the general public may not be considered as being organized and operated exclusively for pleasure, recreation or social purposes.

The _____ is like the organizations in Revenue Ruling 58-589, Revenue Ruling 60-324, and Revenue Ruling 69-219 in that:

1. The golf course is open to the general public for use upon payment of established green fees as posted on the _____ website;
2. The restaurant and lounge are open to the general public and the _____ website states that the rentals are also available for wedding receptions and parties.

| | | |
|---------------------------------|---|--|
| Form 886-A (May 2017) | Department of the Treasury – Internal Revenue Service Explanations of Items | Schedule number or exhibit Form 990 |
| Name of taxpayer | Tax Identification Number <i>(last 4 digits)</i> | Year/Period ended December 31, 20XX |

CONCLUSION

As a result of the examination, the _____ is not a social club organized for pleasure, recreation, and other nonprofitable purposes within the meaning of section 501(c)(7) of the IRC because the _____ facilities are open to the public. Moreover, the related entity, _____, shares the same board members and is used to report all the nonmember income received from the activities derived from the golf course and clubhouse on the _____ Form 1120 for the purpose of retaining the _____ exempt status. Both the _____ and _____ essentially operate as one entity.

The _____ should no longer be tax-exempt under section 501(c)(7) of the IRC. Therefore, it is proposed that the _____ tax-exempt status under section 501(c)(7) of the IRC be revoked effective January 1, 20XX. The _____ will be required to file Form 1120 for all tax periods subsequent to the revocation of their exempt status.

If you agree with this conclusion, please sign the attached Form 6018. If you disagree, please see Letter 3618 for your options.