



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

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

Number: **202110047**  
Release Date: 3/12/2021

UIL: 501.07-00

**Date: September 28, 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 June 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. You have exceeded the non-member income test for tax years ending December 31, 20XX, December 31, 20XX and December 31, 20XX.

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](http://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 20439

U. S. District Court for the District of Columbia  
333 Constitution Ave., N.W.  
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](http://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](http://www.irs.gov/forms-pubs).

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

Sincerely,



Enclosures:  
Publication 892

Sean E. O'Reilly  
Director, Exempt Organizations Examinations



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

Date:  
April 6, 2020  
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:  
ID number:  
Telephone:  
Fax:  
Address: Attn:

Manager's contact information:

Name:  
ID number:  
Telephone:  
Response due date:

**CERTIFIED MAIL – Return Receipt Requested**

Dear \_\_\_\_\_ :

**Why you're receiving this letter**

**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.

**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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

**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](http://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,

Christopher M. Holmes

*for* Marie Hooke

Director, Exempt Organizations Examinations

Enclosures:  
Form 886-A  
Form 6018

Form <b>886-A</b> (May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit N/A
Name of taxpayer	Tax Identification Number ( <i>last 4 digits</i> )	Year/Period ended 12/31/20XX 12/31/20XX 12/31/20XX

**ISSUE:**

Whether (the "Club" ) continues to qualify for exemption under Section 501(c)(7) of the Internal Revenue Code (the "Code")?

**FACTS:**

Background:

The Club was incorporated in the State of , on March 9, 19XX, as a nonprofit corporation. The Club was formed as an extension of the exempt under Section 501(c)(19) of the Code, to own and operate its social club. Article VI of the amended supplementary Articles of Incorporation filed on September 18, 19XX provides:

"...members of this corporation shall consist solely of the members in good standing of of the United States..... any and all properties acquired and held, and any and all income and revenues from any and all activities of this corporation, shall be acquired and held for the sole use and benefit of said ..."

The Club received its exempt status as a social club described under Section 501(c)(7) of the Code in June 19XX.

The assigned agent initiated an audit of the Form 990, *Return of Organization Exempt Under Income Tax*, for the year ended December 31, 20XX, and expanded to the subsequent two years.

Facility and activities:

The Club owns and operates the facility located at The facility is a multi-level building which includes a bar, gaming room, billiards and cards area, kitchen, hall and stage, meeting space, offices, and storage space. The Club activities include:

- Selling alcoholic and non-alcoholic drinks at the bar
- Selling snacks (microwavable, air fried) at the bar
- Holding Wednesdays: the Club purchases from a vendor to sell at the Club. The Club allows takeout orders
- Selling lottery tickets
- Providing a gaming room with several slot type machines
- Pool tables for play

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- Tables for card games
- Holding weekly karaoke
- Holding live music events
- Holding special events (e.g. holiday parties) and fundraisers
- Providing space for \_\_\_\_\_ for its activities and meetings
- Occasionally renting its hall for private use

There are no signs indicating the Club is a member only facility and no key lock system is present.

The Club posted the following operating hours on its front door:

pm on Monday, Tuesday and Sunday  
 pm on Wednesday and Thursday  
 pm on Friday and Saturday

The Trustee confirmed that the Club is open to the public and does not maintain records tracking non-member income. The Trustee explained that public monies are necessary for the financial survival of the Club.

The Club places a sign-in notebook near each entrance and encourages everyone to sign-in. Members sign on one side and guests on the other (clearly labeled). Guests include non-members brought in by members, \_\_\_\_\_ members from other posts, as well as individuals walking in from the public. The Club could not locate sign-in sheets from 20XX and 20XX. The Club provided sign-in sheets for January through August 20XX and January through October 20XX. They indicated that roughly 0% of visitors in 20XX and 0% of visitors in 20XX were non-members.

The Club advertises some of its activities with signs and banners on its building. Window signs advertise \_\_\_\_\_ Wednesdays (\$0 \_\_\_\_\_ and free pool 5-8pm) and \_\_\_\_\_ activities. Other banners on the side of the building are vendor advertisement (liquor products sold at the bar). The Club has a \_\_\_\_\_ account on which events are posted. Special events are advertised on radio/paper a couple of times a year.

Members of the \_\_\_\_\_ are also members of the Club. Members do not pay dues to the Club. Members do not get any discount for any products sold or services provided at the Club.

The income attributable to non-members is unknown because the Club did not track this income separately.

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The Club reported the following income and expenses on its Forms 990:

	12/31/20XX	12/31/20XX	12/31/20XX
Income	0	0	0
Expenses	0	0	0
Net Profit	0	-0	0

## LAW:

### Internal Revenue Code

Section 501(c)(7) of the Code 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.

Senate Report No. 94-1318 (1976), 2d Session, 1976-2 C.B. 597, at page 599 defines “substantially all” and explains that a social club is permitted to receive up to 35% of its gross receipts, including investment income, from sources outside of its membership without losing its tax-exempt status. It is also intended that within this 35% not more than 15% of the gross receipts should be derived from the use of a social club’s facilities or services by the general public (nonmembers).

### Treasury Regulations

Section 1.501(c)(7)-1(a) of the Federal Tax Regulations (the “Regulations”) 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.

Section 1.501(c)(7)-1 of the Regulations states that a social club that opens its facilities to the public is deemed to be not organized and operated exclusively\* for pleasure, recreation, and other nonprofitable 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. However, an incidental sale of property will not deprive a club of its exemption.

[\* Section 1.501(c)(7)-1 of the Regulations has not been updated to reflect P.L. 94-568 which changed “exclusively” to “substantially all”.]

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## Revenue Rulings

Revenue Ruling 60-324, 1960-2 C.B. 173, 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 66-149, 1966-2 C.B. 146, holds a social club as not exempt as an organization described in Section 501(c)(7) of the Code where it derives a substantial part of its income from non-member sources.

## Revenue Procedures

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 Section 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.



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Exceptions to these record keeping requirements are:

1. Where a group of 0 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 club 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.

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.

**GOVERNMENT'S POSITION:**

The Club does not qualify for exemption as a social club described under Section 501(c)(7) of the Code and Regulations. These sections provide that in general, this exemption extends to social and recreation clubs which are supported primarily by membership fees, dues, and assessments.

Revenue Rulings 66-149 and 60-324 support this position stating that a social club that opens to the public and derives a substantial part of its income from non-member sources is not exempt as an organization described under Section 501(c)(7) of the Code.

The Club permits unrestricted use of its facilities by the public daily. The sign-in sheets provided from 20XX and 20XX reflect roughly an equal amount of member and non-member use of the facility.

The Club did not maintain books and records identifying non-member income as required under Revenue Procedure 71-17. Therefore, all of the Club's income is considered non-member income. The Club has exceeded the 15% non-member threshold as outlined in Public Law 94-568.

Accordingly, the Club's tax-exempt status should be revoked.

**TAXPAYER'S POSITION:**

The Club's position is unknown at this time.

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**CONCLUSION:**

The Club no longer qualifies for exemption under Section 501(c)(7) of the Code because your nonmember income has exceeded the 15% nonmember threshold on a continuing basis. Therefore, its exempt status under Section 501(c)(7) of the Code is revoked for tax periods ending December 31, 20XX through 20XX.

Upon revocation, the Club needs to provide a completed Form 1120, *U.S. Corporation Income Tax Return*, for the year ending December 31, 20XX through 20XX. The Club is required to file Forms 1120, for any year thereafter the tax year ending December 31, 20XX, if the Club remains subject to Federal Income Tax.