



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

Date:
06/18/2024
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Release Number: 202437008
Release Date: 9/13/2024
UIL Code: 501.07-00

Dear :

This letter is our final determination that you don't 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). 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 the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. Read the enclosed Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 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 call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Letter 437
Redacted Letter 4034
Redacted Letter 4038

cc:



Department of the Treasury
Internal Revenue Service

Date: 4/11/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date

C = Year

D = State

E = Name

G = Name

x = Number

y = Numbers

z percent = Number

UIL:

501-07-00

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(7). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under IRC Section 501(c)(7)? No, for the reasons stated below.

Facts

You incorporated on B in the state of D and operate as the E. You are a membership organization, and your membership is open to the public. Your primary activity is conducting an annual G parade and other events associated with G. Further, throughout the year, your members will get together for activities such as family float viewing day, costume pick-up and throw distribution, float loading, pre and post parade party, _____, a _____ party, and a _____ party, etc. Your members pay annual dues which allows them to participate in your activities. A small office space is leased to hold Board of Director meetings. A warehouse is also leased to store your _____ throughout the year.

Your primary source of revenue is from bingo, pull tabs and other gaming activities. These are conducted at a commercial bingo hall, owned, and operated by an unrelated third party. You spend x hours per game on these gaming activities, in the range of y games per month. All bingo games are open to the public, and you do not keep records of the number of participants of the bingo games. Your members go to the rented bingo hall to conduct the gaming activities. Use of bingo gaming funds has been limited to paying for _____ and _____

donations for food baskets. For year C, z percent of your gross receipts is from nonmember sources. Specifically, this income is from bingo games, pull tab proceeds, and bingo donations.

Law

IRC Section 501(c)(7) exempts from federal income tax, 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 Regulation Section 1.501(c)(7)-1(a) states that the exemption provided by IRC Section 501(a) for an organization described in Section 501(c)(7) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part of its net earnings inure to the benefit of any private shareholder. 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.

Treas. Reg. 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 or by selling real estate, timber, or other products, is not organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, and is not exempt under IRC 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.

Rev. Rul. 58-589, 1958-2 C.B. 266, sets forth the criteria for exemption under IRC section 501(c)(7), and provides that a club may lose its exemption if it makes its facilities available to the general public. A club will not be denied exemption merely because it receives income from the general public provided such participation is incidental to and in furtherance of its general club purposes. To retain exemption a club must not enter into outside activities with the purpose of deriving profit. If such income producing activities are other than incidental, trivial or nonrecurrent, it will be considered that they are designed to produce income and will defeat exemption.

Rev. Rul. 69-220 1, 1969-1 C.B. 154, held a social club that receives a substantial portion of its income from the rental of property and uses such income to defray operating expenses and to improve and expand its facilities is not exempt under IRC Section 501(c)(7). This club is not exempt from federal income tax under Section 501(c)(7) because it is regularly engaged in a business ordinarily carried on for profit and because net income from the activity is inuring to the members of the club.

Rev. Proc. 71-17, 1971-1 C.B. 683, sets forth the guidelines for determining the effect of gross receipts derived from the general public's use of a social club's facilities on exemption under IRC Section 501(c)(7). Specifically, social clubs can receive up to 35 percent of their gross receipts, including investment income, from sources outside their membership. Within the 35 percent, not more than 15 percent of gross receipts should be derived from the use of the social club's facilities or services by the general public (nonmembers). Where nonmember income from the usage exceeds the standard as outlined in this Revenue Procedure, the conclusion reached is that there is a non-exempt purpose.

Pittsburgh Press Club v. U.S., 615 F.2d 600 (1980), held that the Commissioner properly revoked the club's tax

exemption because of the club's trade with nonmembers. The Press club had an obligation to maintain records adequate to establish its right to tax exemption as social club.

In City of Galveston, Texas v. United States, 33 Fed. Cl. 685, 707-08 (1995), the court stated the mere fact that one taxpayer has been treated differently from another taxpayer does not establish the other's entitlement.

The Committee Reports for Public Law 94-568, HR 1144, provides under IRC Section 501(c)(7) that social clubs be operated substantially for pleasure, recreation, and other non-profit purposes. An organization may receive up to 35% of its gross receipts from a combination of investment income and non-member receipts, as long as non-member receipts do not represent more than 15% of total receipts.

Application of law

Treasury Regulation Section 1.501(c)(7)-1(a) states that the exemption provided by IRC Section 501(a) for an organization described in Section 501(c)(7) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes. Exemption extends to social and recreation clubs which are supported solely by membership fees, dues, and assessments. Based on your sources of income you do not qualify as you are supported substantially through non-member income sources from your gaming activities.

Per Treas. Reg. Section 1.501(c)(7)-1(b), when a club engages in business it is not organized and operated exclusively for pleasure, recreation, and other nonprofit purposes. As described in Rev. Rul. 58-589, although a club may receive some income from the general public, your gaming activities are more than incidental and, therefore, preclude exemption under IRC Section 501(c)(7).

Rev. Rul. 69-220 held a social club that receives a substantial portion of its income from the rental of property and uses such income to defray operating expenses is not exempt under IRC Section 501(c)(7). Your gaming activities are conducted with the purpose to generate income, decreasing the amounts needed to be contributed by your members. This income is in part supporting your activities, which decreases the financial obligations of your members, and therefore this income is inuring to their benefit.

A substantial portion of your income is generated from business done with the general public. By receiving z% of your revenue from non-members, you fail the membership income tests set forth by the Committee Reports on Public Law 94-568. You do not meet the facts and circumstances exception for this income test as your gaming activities are regular and substantial.

Your position

You originally classified your gaming income as nonmember income, but later changed it to member income. You stated the bingo income, pull tabs and bingo donations are earned by the members by working the bingo games at a separate bingo hall owned by another organization. By agreeing to send member workers to assist in running the bingo games, your club is entitled to a share of the profits. Therefore, this income is not income which can be attributed to nonmembers being at a facility which is owned or operated by the club.

You later stated that all expenses incurred with running the bingo games should therefore be deducted. By doing so, you would reduce the income derived from bingo to well below the limitations.

You further stated since the amounts of gross receipts that you receive from nonmember activities exceeds the permissible amounts provided by the gross receipts test, all of the facts and circumstances should be considered, such as the nature and extent of your activities, your sources of gross receipts, your expenses, your assets, your liabilities, and your methods of operation. You stated that you operate a G event and host a parade open and free to the public.

Finally, you provided a list of organizations whose operations you believe are similar to yours and are exempt under IRC Section 501(c)(7).

Our response to your position

You have failed to provide additional information that shows you qualify under IRC Section 501(c)(7). The bingo hall is your facility during your rental period. Your income is derived from nonmembers participating in gaming activities that are open to the public. The fact that your members work at the bingo games does not re-characterize it as member income. Rev. Proc. 71-17 specifically states the nonmember income percentage is computed using gross receipts, not net income. Also, you have failed to meet the “facts and circumstances” exception discussed in the Pittsburgh Press Club, because z percent of the bingo proceeds are derived from nonmembers even though your members assist in operating the bingo games. The nonmember gross receipts generated net profits for you. Your bingo games occur regularly. Due to these facts, you fail to meet the “facts and circumstances” exception.

Regarding other organizations that you claim are similar to you, the facts and issues concerning the alleged tax-exempt status of those organizations are not relevant to our determination here. Disparate treatment claims are not supported by the law. In City of Galveston, Texas v. United States, 33 Fed. Cl. 685, 707–08 (1995), the court stated the mere fact that one taxpayer has been treated differently from another taxpayer does not establish the other’s entitlement. The fact that all taxpayers or all areas of the tax law cannot be dealt with by the Service with equal vigor and that there thus may be some taxpayers who avoid paying the tax cannot serve to release all other taxpayers from the obligation. As such, a taxpayer cannot premise its right to an exemption by showing that other have been treated more generously, leniently, or even erroneously by the IRS.

Conclusion

Based on the information you have provided you do not qualify for exemption under IRC Section 501(c)(7). You exceed the allowable levels of non-member income. Therefore, exemption is not granted to you under Section 501(c)(7).

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.

If you don’t agree

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

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference

- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

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

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, 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 they haven'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 gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

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

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
PO Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest 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 they received it.

You can get 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 listed at the top of this letter.

Contacting the Taxpayer Advocate Service

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 if 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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements