

Guidelines are set forth for determining the effect of gross receipts derived from nonmember use of a social club's facilities on the club's exemption under section 501(c)(7) of the Code; recordkeeping requirements are described; Revenue Procedure 64-36 superseded.

SECTION 1. SCOPE AND PURPOSE.

This Revenue Procedure 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 Internal Revenue Code of 1954. These guidelines will be used in connection with the examination of annual returns on Forms 990 and 990-T filed by social clubs. This Revenue Procedure also describes the records required when nonmembers use a club's facilities and the circumstances under which a host-guest relationship will be assumed, which are relevant both for purposes of determining adherence to the exemption requirements and for computing exempt function income under section 512(a)(3) of the Code. However, this Revenue Procedure does not deal with other factors bearing on the exempt status of clubs.

SEC. 2. BACKGROUND.

.01 General statement.--Use of a club's facilities by the general public is significant for two reasons. It may indicate the existence of a nonexempt purpose; or, if not of sufficient substantiality to result in loss of exemption, it may make the club liable for unrelated business income tax. The term 'general public' as used in this Revenue Procedure means persons other than members of a club or their dependents or guests. The member's spouse is treated as a member.

.02 Nonexempt purpose.--In the examination of information returns of clubs, the problem frequently is to determine under what circumstances and to what extent the fact that a club makes its facilities available to the general public is to be relied upon by the Service as indicating the existence of a nonexempt purpose.

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 nonprofitable purposes. See Rev. Rul. 60-324, C.B. 1960-2, 173; and Rev. Rul. 69-219, C.B. 1969-1, 153. However, this does not mean that all dealings with the general public are necessarily inconsistent with the club's purposes. See Rev. Rul. 58-589, C.B. 1958-2, 266; Rev. Rul. 68-119, C.B. 1968-1, 268; and Rev. Rul. 69-636, C.B. 1969-2, 126.

.03 Unrelated business income tax.--Clubs have been made subject to the tax on unrelated business income for taxable years beginning after December 31, 1969. Section 511(a) of the Code (as amended by the Tax Reform Act of 1969, Public Law 91-172, C.B. 1969-3, 10) and section 512(a)(3) of the Code (added by the Tax Reform Act of 1969).

The unrelated business taxable income of a club is its gross income (excluding any exempt function income), less the allowable deductions directly connected with the production of the gross income (excluding exempt function income), both computed with the modifications specified. Section 512(a)(3)(A) of the Code.

SEC. 3. GUIDELINES.

.01 Minimum gross receipts standard.--A significant factor reflecting the existence of a nonexempt purpose is the amount of gross receipts derived from use of a club's facilities by the general public. As an audit standard, this factor alone will not be relied upon by the Service if annual gross receipts from the general public for such use is \$2,500 or less or, if more than \$2,500, where gross receipts from the general public for such use is five percent or less of total gross receipts of the organization. This minimum gross receipts standard reflects the audit experience of the Service that gross receipts at or below this level do not, standing alone, usually demonstrate a nonexempt purpose. Even though gross receipts from the general public exceed this standard, it does not necessarily establish that there is a nonexempt purpose. A conclusion that there is a nonexempt purpose will be based on all the facts and circumstances, including but not limited to the gross receipts factor. This audit standard relates only to determinations of exempt status. There is no minimum audit tolerance with respect to unrelated business taxable income.

.02 Meaning of the term 'total gross receipts'.--For the purpose of the minimum gross receipts standard established in section 3.01 above, 'total gross receipts' means receipts from normal and usual activities of the club including charges, admissions, membership fees, dues, and assessments. Excluded for this purpose are (a) initiation fees and capital contributions, (b) interest, dividends, rents, and similar receipts, and (c) unusual amounts of income such as amounts derived from nonrecurring sales of club assets.

.03 Assumption as to status of nonmembers.

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 75 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 section 3.03 1 and 3.03 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.

4 In all other situations, a host-guest relationship will not be assumed but must be substantiated. See section 4, below, for the records required.

SEC. 4. RECORDKEEPING REQUIREMENTS.

.01 With respect to the situation described in section 3.03 1, above, the records specified in section 4.03, below, need not be maintained by the club. However, the club must maintain adequate records to substantiate that the group was comprised of eight or fewer individuals, that at least one of them was a member, and that payment was received by the club directly from members or their employers. Where payment is made directly to the club by the member, the club is under no obligation to inquire about reimbursement.

.02 With respect to the situation described in section 3.03 2, above, the records specified in section 4.03, below, need not be maintained by the club. However, the club must maintain adequate records to substantiate that 75 percent or more of the persons in the group were, in fact, members of the club at the time of such use and that payment was received by the club directly from members or their employers. Where payment is made directly to the club by the member, the club is under no obligation to inquire about reimbursement.

.03 With respect to all other occasions involving use by nonmembers, 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. (The use of club facilities must serve some personal or social purpose of the employee-member or some direct business objective of the employee-member; the mere use of club facilities for the accommodation of the member's employer does not serve a business, personal, or social purpose of the member.) If a large number of nonmembers are involved and they are readily identifiable as a particular class of individuals, the member may record such class, rather than all of the names; and

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.

.04 Failure to maintain such records or make them available to the Service for examination will preclude use of the minimum gross receipts standard and audit assumptions set forth in this Revenue Procedure.

SEC. 5. EFFECTIVE DATE.

The provisions of this Revenue Procedure, including the recordkeeping requirements newly established, become effective on July 1, 1971.

SEC. 6. EFFECT ON OTHER DOCUMENTS.

Revenue Procedure 64-36, C.B. 1964-2, 962, is superseded as of June 30, 1971.