

EXPERTS' CORNER

Q I heard that the club's tax-exemption is at risk because it permits nonmember events (such as a wedding or golf outing) to be held at the club. Why didn't your firm tell us?

A The club's tax-exemption is not at risk provided that the club acted within the applicable federal tax law. For this answer, we refer to S. Rept. No. 94-1318 (1976), 1976-2 C.B. 597, which provides that "[s]ocial clubs are permitted to receive up to 35 percent of their gross receipts from nonmembers and investment income provided that not more than 15 percent of the gross receipts may be derived from the use of club facilities or services by nonmembers of the club."

Simply stated, we disagree that a club, which makes its social and recreational facilities available to nonmembers, is necessarily jeopardizing its tax-exempt status. Our view, which is consistent with the federal tax law, is that, if the club's revenues exceed the 15/35 percent safe harbor amounts with respect to its nonmember revenue (as defined), the club's tax-exempt status may be at risk. If the club exceeds the 15/35 percent safe harbor amounts, then a facts and circumstance analysis is applied to determine if substantially all of the club's activities are related to its exempt purpose.

Q Will advertising for nonmember use of the club's facilities result in the club losing its tax-exempt status? Our website has a banquet section!

A The rules with respect to club advertising are often misunderstood, in large part, because the oft-cited treasury regulation has not been revised to incorporate changes that have occurred to the federal tax law, including among others, PL 94-568 (see generally, S. Rept. No. 94-1318 (1976)). Treas. Reg. 1.501(c)(7)-1(b) provides, in part, that 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. In considering the regulatory language with respect to advertising, it should be noted that, because of PL 94-568, the present statutory language for exemption only requires that a club be operated substantially, and not exclusively, for pleasure, recreation or social purposes, and such change

should be considered with respect to the application of Treas. Reg. 1.501(c)(7)-1(b)). Furthermore, advertising is not per se prohibited by Treas. Reg. 1.501(c)(7)-1(b)).

The club may want to consider the following:

- Remove the banquet page;
- Move the banquet page to the members only section of the website, if available; or
- If removal or movement of the banquet page is not practical, it may be prudent to note "The Privileges of Membership" on the banquet page; therefore, the website reader is on notice that the banquet facilities are for members only.

... we are not proponents of advertising for other reasons and would be concerned if the club's unrelated business income was in the upper third of the safe-harbor amount. As we have repeatedly advised our clients ... "Proceed with Caution."

If the club's unrelated business income is more than 15 percent, advertising is problematic; but, if the club's unrelated business income is less than the aforementioned 15 percent safe-harbor, advertising does not, on its face, seem problematic under the federal tax law. That being said, we are not proponents of advertising for other reasons and would be concerned if the club's unrelated business income was in the upper third of the safe-harbor amount. As we have repeatedly advised our clients with respect to advertising, "Proceed with Caution."

Editor's Note: While advertising and its impact on tax-exempt status are discussed in the article, clubs should also look at the requirements to maintain private status, too.



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Q

How do you say “no” in the boardroom?

A

As servant leaders in the hospitality industry, general managers are programmed to please both members and their guests. The DNA of the best hospitality executives contains this trait. Jeff McFadden, COO/GM of The Union League of Philadelphia, operates by the mantra “The answer is ‘yes.’ Now what’s the question?” We know the answer can’t always be “yes,” yet creating alternatives to “no” is crucial. Saying “no” too many times can be a career limiting experience.

More frequently, boards engage us because their prior general manager was perceived as having a narrow view—not being open minded to suggestions or was not progressive (enough) in his/her approach to managing change. When the GM’s answer is predominately “no”—without offering alternate solutions or recommendations to the question—the board eventually looks for a “yes” response, and then gets it from their next general manager.

The answer “no” may suffice as long as legitimate alternative recommendations or solutions are provided. While it is critical to identify the best solution, the general manager may need to gather more intelligence or defer suggestions until more thought can be given to the request.

So how do you balance managing the business and being responsible to a variety of stakeholders who have different ideas and in some cases, different agendas with what you professionally believe is the right answer?

Listen

Demonstrate that you are listening and that their ideas matter. Managers can get frustrated when volunteer members who may not understand the nuances or mechanics of club management question their expertise. However, managers must be respectful of the board members’ volunteer commitment, time and professional successes. Consider their ideas and perspectives and find a way to extract the good ideas and, if necessary, rework those that aren’t as good. Find a way to reach a common consensus—many of their ideas may be noteworthy.

Managing Up

What does it take to manage up? In a recent survey conducted with our clients, respondents ranked behaviors in order of importance from a range of choices of what it takes

for their managers to be successful in managing up. The top six responses from fifteen choices were:

Being proactive, demonstrating initiative	62%
Understanding your manager’s style, working preferences and needs	52%
Keeping managers apprised of progress in achieving goals	44%
Anticipating and facilitating resolution of problems	42%
Being open and honest	33%
Bringing solutions	33%

When asked in the survey to rank board member behaviors that if absent or poorly demonstrated would be most damaging to their motivation, managers rated the following seven highest among 28 choices:

Avoiding micro-managing, balancing “hands off” with “the need to know”	47%
Being treated with respect	44%
Being consistent, fair and predictable	40%
Being open and willing to listen to suggestions	29%
Leading by example (being a positive role model)	29%
Being trustworthy	28%
Providing positive feedback, appreciative of your efforts	26%

Saying “no” for most people who work in hospitality is not in one’s DNA and sometimes comes from frustration. This is a critical time for emotional intelligence to kick in.

Self-Regulate: Stay cool, calm and unemotional and work to defuse the situation where emotion may block communication.

Be Self-Aware: Recognize your own emotions and the impact of your behavior or actions on the various stakeholders.

Show Empathy: Recognize your board member’s or your manager’s state of mind, their pressures, problems and issues, and tailor your message and your timing accordingly.

Use Social Skills: Communicate succinctly, listen and hear, influence and diffuse difficult situations.

The best managers create an environment in which a meritocracy of ideas thrives—the best idea wins, regardless of its source. ■



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