



**DEPARTMENT OF THE TREASURY**

Internal Revenue Service  
ATTN: Mandatory Review, MC 4920 DAL  
1100 Commerce Street  
Dallas, TX 75242

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

May 8, 2008

Number: **200837035**  
Release Date: 9/12/2008

UIL: 501.06-01

LEGEND

ORG = Organization name      XX = Date      Address = address

ORG  
ADDRESS

Taxpayer Identification Number:  
Person to Contact/ID Number:  
Contact Numbers:  
Telephone:  
Fax:

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Dear :

In a determination letter dated May 2, 20XX, you were held to be exempt from Federal income tax under section 501(c)(6) of the Internal Revenue Code (the Code).

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(6) of the Code. Accordingly, your exemption from Federal income tax is revoked effective **January 1, 20XX**. This is a final adverse determination letter with regard to your status under section 501(c)(6) of the Code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On October 24, 20XX, you signed Form 6018-A, *Consent to Proposed Action*, agreeing to the revocation of your exempt status under section 501(c)(6) of the Code.

You have filed taxable returns on Forms 1120, *U.S. Corporation Income Tax Return*, for the years ended December 31, 20XX, 20XX, 20XX, and 20XX with us. For future

periods, you are required to file Form 1120 with the appropriate service center indicated in the instructions for the return.

You have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States 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 may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

Marsha A. Ramirez  
Director, EO Examinations



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
TE/GE EO Examinations  
1500 Ormsby Station Court Suite A – Stop 700  
Louisville, KY 40223

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

September 11, 2006

LEGEND

ORG = Organization name      XX = Date      Address = address

ORG  
ADDRESS

Taxpayer Identification Number:  
Form(s):  
Tax Year(s) Ended:  
Person to Contact/ID Number:  
Contact Numbers:

Dear :

The purpose of this letter is to inform your organization on our findings as of now.

We have enclosed a copy of our **draft** report of examination explaining why we believe an adjustment of you organization's exempt status is necessary.

If you accept our findings, please sign and return the enclosed Form 6018, *Consent to Proposed Adverse Action*. We will then send you a final letter modifying or revoking exempt status. You will also be required to file Forms 1120 for December 31, 20XX, 20XX, and 20XX. These returns can be filed at a later date.

If you do not agree with our position or have additional information to present, please mail all information to the address in the heading of this letter so that we receive it by **October 5, 20XX**.

If I do not hear from you by **October 5, 20XX**, I will issue my final report. After I issue my final report, you will have 30 days from the date the letter is mailed to file an appeal. Information on this process will be with the final report (if required).

If you have any questions or would like to arrange a telephone conference with my manager, please call me at the telephone number listed under the contact information.

Thank you for your cooperation.

Sincerely,

Jason Jarvis  
Internal Revenue Agent

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
<b>Name of Taxpayer</b>  ORG		<b>Year/Period Ended</b>  20XX12, 20XX12, and 20XX12

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ORG = Organization name      XX = Date      City = city      XYZ = State  
CO-1 = 1<sup>st</sup> company      President = President      Treasurer = Treasurer  
Accountant = Accountant      POA = POA  
CO-1, CO2, CO3, CO4, CO5, CO6 = 1<sup>ST</sup>, 2<sup>ND</sup>, 3<sup>RD</sup>, 4<sup>TH</sup>, 5<sup>TH</sup>, 6<sup>th</sup>, 7<sup>th</sup> COMPANIES

**Issue:**

1. Should the tax-exempt status of ORG (ORG) be revoked?

**Facts:**

ORG was granted tax-exempt status as a 501(c)(6) business league on May 2, 20XX.

According to the Form 1024 the past, present, and planned activities state:

"The corporation serves as a trade association in the independent restaurant industry. The corporation provides educational programs and seminars on issues relevant to the independent restaurant industry. Sample topics for the programs and seminars include improving efficiency, maximizing resources, marketing effectively and addressing relevant labor issues. These activities are conducted by the corporation's officers, directors, staff and volunteers. These activities are held periodically and at various locations throughout the United States.

The corporation got off to a very slow start. It had almost no activity during 19XX, 19XX, and early 20XX. Its program and seminar activities commenced in the spring of 20XX with a regional program held in City, XYZ. The corporation had 4 regional symposiums in 20XX, including programs in City, XYZ, City, XYZ, City, XYZ and City, XYZ.

The corporation also publishes a periodic newsletter addressing issues facing the independent restaurant industry. The publication is prepared by the corporation's officers, directors, staff and volunteers."

The letter that granted ORG tax-exempt status stated,

"If your sources of support, or your purposes, character, or method of operation change, please let us know so we can consider the effect of the change on your exempt status."

ORG files a consolidated for all the chapters.

ORG is a membership organization. The current membership is made up of approximately 750 restaurants from across America. Individual restaurants are part of local chapters called "originals". There are approximately 20 different originals.

In a message from the President of CO-7 titled *Working Together for a Common Cause*, March 20XX it stated

"The overview of ORG is having an identifiable Brand is the fabric that will tie hundreds of Independents together." CO-1 has 1671 units. By the end of 20XX, that is where I foresee CO-7. With the clout of our pooled marketing resources, we will be influencing hundred of thousands of dining decisions and be able to fortify and distinguish our Brand as the one savvy consumers seek every time they dine out. Whether it's through the website, an article someone read in the newspaper or magazine, advice from a friend or an attractive brochure, the ultimate goal is to fill your seats tonight and every night you open your doors. It's going to work a lot better when we're all working together." President.

The activities of the ORG include:

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- The branding of "CO-7" to increase the profits of the members.
- The use of the internet and printed material to influence the public to eat at the member restaurants.
- The hiring of outside public relation firms to help promote "CO-7"
- Selling gift certificates of the member's restaurants.

One June 14, 20XX, a phone conference was conducted Treasurer (ORG's Treasurer). The Revenue Agent's questions are numbered, and the answers provide by ORG are listed below. Treasurer (book keeper) was also involved on the phone call.

1. Every exempt organization is operated differently. Based off of the material that was provided, I believe that the primary activity of the organization is the promotion of the "CO-7" brand. The brand is used by the member restaurants as a way to get the name of the member restaurants out to the public. The brand name is a way to get people in the doors of the member restaurants. The name is marketed on websites, advertising, rack cards, brochures, loyalty cards, radio, telephone, etc. I am correct?
  - Yes, the basic activities are to 1. Market "CO-7" and 2. use the buying power to lower costs.
2. Why do restaurants join ORG?
  - Get people in the doors, increase money
  - Decrease costs
3. Who can use the "CO-7" trademark?
  - Members only
4. What are the advantages of the member restaurants that use the "CO-7" trademark?
  - Brand that the public will recognize across the country.
  - People will look for your restaurant because of "CO-7"
  - Recognition
  - Best practices (shared stories from other Independent restaurants).
  - Relationships with other Independent restaurants.
5. Can an independent restaurant use the "CO-7" trademark without joining the organization?
  - No
6. How do the non-member independent restaurants benefit?
  - There should be no benefit. The might benefit very slightly because they are independent. A restaurant would be encouraged to join ORG.

ORG markets all of the member restaurants thru the "CO-7" trademark.

ORG operates a website that lists information of all the originals and restaurants. The information includes website links and gift certificates.

According to the information that is provided to prospective members, a few of the marketing goals are:

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- Create an easily recognizable National Brand
- Place advertising that enhances and educates consumers about our brand and our website

The two goals of "CO-7" are:

1. More Butts in your restaurant's seats
2. More money for you to deposit in the bank at the end of the day.

The big picture is to: "have an identifiable Brand is the fabric that will tie hundreds of Independents together."

The chapters are strongly encouraged to use the "I'm an Original theme."

"We have to work on building our Brand to the point that the dining-out public makes a conscience effort to seek a restaurant whenever they are dining out."

Some of the activities of the chapters to reach goal 1 (more Butts in the member restaurant seats) include:

**CO-1**

- **Ads** – CO-1 in lifestyle magazine promoting independent restaurants and listing members "Think globally-Eat Locally" theme.
- **Rack Cards** – *Take Me*, listing member restaurants with the name, phone number and web address of all CO-1 restaurants.
- **Media Cooperation** – Magazines and newspapers that print lists of local restaurants asked to place a small logo next to member restaurant's name.
- **Brochure** – promotes CO-1 restaurants with local map and logo.
- **Charitable Events** – CO-1 strive to "own" important non-profit fund raising events that need food service. Chain restaurants excluded from the event.

**CO-2**

- **Rack Cards** – *Be Original*, listing member restaurants with the name, phone number and web address of all CO-2 restaurants.
- **Loyalty Card** – *Power Card*, customer loyalty program with points redeemable at any Original.
- **Magazine** – *CO-2 Magazine*, produced by the CO-2 and CO-2 Dining Card.
- **Phone Line** – *Dining-In*, line directing potential customers to restaurants.

**CO-3**

- **Brochure** – *Welcome to Our Fair City*, tri-fold brochure promoting independent restaurants with address, phone number and web address listings.
- **Magazine** – *CO-3 Magazine*, a twenty-one page publication promoting area's unique local Flavor.

**CO-4**

- **Rack Cards** – *Take One*, listing member restaurants with the name, phone number and web address of all restaurants.

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**CO-5**

- **Ads** – All ads include participating members.
- **Promotion** – *Tuesday Promotion*, diners visit a participating member restaurant for dinner and server presents a form to capture name, address, phone number and email. After 3 more Tuesday dinners at different member restaurants, diner receives a \$50 dining certificate. CO-5 now has a mailing list with 93 names and has presented 460 dining certificates.

**CO-5**

- **Rack Cards** – *Take Me*, listing member restaurants with the name, phone number and web address of all CO-5.
- **Other Collateral** – *Concierge Book* listing all CO-5.

**CO-6**

- **Loyalty Card** – *Power Card*, customer loyalty program with points redeemable at any CO-6.
- **Ads** – CO-6 ads in Magazine to promote independent restaurants.
- **Radio** – Saturday morning *Culinard* talk show to promote independent restaurants.
- **Logo** – Member restaurants place CO-6 Logo in their restaurants.

**CO-7**

- **Marketing** – retained CAP creative, a design, public relations and branding firm that conducted extensive consumer research to define the Originals brand then designed a marketing initiative and media plan based on the results and developed collateral materials.
- **Dining Guide** – Eighteen page member dining guide featuring half-page ads for each restaurant and map of restaurant locations.

To achieve goal 2 (More money at the end of the day, the restaurants band together to create the same buying clout that chains have and negotiate better prices with broad line distributors and other vendors.

ORG sells gifts certificates for their member restaurants. The sale of gift certificates funds dues by allowing restaurants to sell their gift certificates on line and use the proceeds of the sales to fulfill their dues obligations. This is an effective model for the association because it passes the cost of dues out of cash flow. Each restaurant makes an agreed upon number of gift certificates available to to sell on line at an agreed discounted price. The gift certificates are discounted to insure quick and complete sales. Each chapter is empowered to set the discount rate at their gift certificates will be sold.

Information Documents Requests (IDRs) were sent to ORG on 4/5/20XX, 5/17/20XX, 7/12/20XX, and 7/24/20XX. As of the writing of this report, ORG has failed to produce some of the requested documents.

For TYE 20XX12, gross receipts reported on the Form 990 were \$.

For TYE 20XX12, the gross receipts reported on the Form 990 were \$. The Form 990 was filed only represents the financial data of the national chapter. The correct gross receipts are unknown.

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No Form 990 was filed for TYE 20XX12.

**Law:**

Section 501(c)(6)-1 of the Code states a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self sustaining, is not a business league. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of section 501(c)(6) and is not exempt from tax. Organizations otherwise exempt from tax under this section are taxable upon their unrelated business taxable income. See part II (section 511 and following), subchapter F, chapter 1 of the Code, and the regulations thereunder.

Rev. Rul. 68-182, 1968-1 CB 263 states "It is the position of the Service that organizations promoting a single brand or product within a line of business do not qualify for exemption from Federal income tax under section 501(c)(6) of the Code. See *Produce Exchange Clearing Association, Inc. v. Helvering*, 71 F. 2d 142 (1934), Ct. D. 898, C.B. XIII-2, 209 (1934)."

Rev. Rul. 70-80, 1970-1 CB 130 held that a nonprofit trade association whose principal activity is the promotion of its members' products under the association's registered trademark does not qualify for exemption under section 501(c)(6) of the Code.

Rev. Rul. 66-338, 1966-2 CB 226 denied exemption to an organization that as part of its activities sells supplies and equipment to its members. Provision of supplies, equipment, and additional services provides members with a convenience and economy in the conduct of their businesses. As such, it is a business of a kind ordinarily carried on for profit.

In *MIB, Inc. v. Commissioner*, 734 F. 2d 71 (1<sup>st</sup> Cir. 1984), the court noted that a business league must not only improve the conditions of a line of business, but must do so in a way different from simply supplying products or services to its individual members.

Section 1.6033-2(i)(2) of the Internal Tax Regulation provides, in part, that every organization exempt from tax shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status. Failure to comply with our request for information could result in the loss of your tax exempt status.

Section 6652(c) of the Internal Revenue Code provides for a penalty of \$20 for each day the return is late. The maximum penalty for any one return is the lesser of \$10,000 or 5% of the gross receipts of the organization for the year. If gross receipts exceed \$1,000,000 for the year, the penalty is increased to \$



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per day with a maximum penalty of \$. This penalty may be abated if reasonable cause for the late filing has been established. The penalty may also be charged if the organization files an incomplete or incorrect return. The use of a paid prepare does not relieve the organization of its responsibility to file a complete and accurate return.

**Taxpayer's position:**

On 9/6/20XX, ORG's POA, POA, stated that the organization may agree with the revocation. On 9/7/20XX, Treasurer, requested that the IRS takes no further action until the Board of Directors meeting on September 23, 20XX.

ORG agreed to the revocation and signed a Form 6018-A on 10/24/20XX. On 10/25/20XX, the form was faxed to the IRS. ORG also mailed the original copy.

**Government's position:**

The brand name "CO-7" is promoted by the ORG in a way that is intended to give members of the association a competitive advantage over others in the same industry. ORG failed to meet the line of business test. The activities of ORG only served a segment of the restaurant industry. The primary activity of ORG is the promotion of the brand name "CO-7" and encouraging members of the public to dine at the member restaurants. The activities of ORG are not consistent with the activities listed on their application for exemption.

ORG provided numerous publications that prove the primary activity is the promotion of the member restaurants and "CO-7".

**Conclusion:**

The primary activity of ORG is the promotion of the member restaurants. This is accomplished through the "CO-7" trademark and other promotional activities. An overwhelming majority of the activities of ORG is providing services to its members. ORG does not qualify for exemption from federal income tax as a business league under section 501(c)(6).

The tax-exempt status of ORG will be revoked effective January 1, 20XX.

ORG is required to file Forms 1120 for 20XX, 20XX, and 20XX by December 11, 20XX.