



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **200843035**
Release Date: 10/24/2008

Date: July 29, 2008

U.I.L.: 501.06-01

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

EO

Dear :

This is our final determination that you do not qualify for exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(6).

We made this determination for the following reason(s):

Your membership is limited primarily to merchants in a particular shopping center, and your primary activity is to promote your shopping center and named individual merchants therein through advertising. This is a particular service proscribed under section 1.501(c)(6)-1 of the Income Tax Regulations.

You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under section 6110 of the Code, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely yours,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: April 10, 2008

U.I.L. – 501.06-01

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A =
B =
C =
D =
M =

Dear :

We have considered your application for recognition of exemption from federal income tax under section 501(c)(6) of the Internal Revenue Code. Based on the information submitted, we have concluded that you do not qualify for exemption under this section. The basis for our conclusion is set forth below.

The information submitted indicates that you (M) were incorporated on February 9, , under the laws of the State of A. Your Certificate of Incorporation states that the objects for which you are formed are as follows:

- To effect a close union of all the individuals, partnerships, firms, and corporations engaged in commercial or professional activities in B in all matters pertaining to the welfare and advancement of B, the city of C, and the State of A.
- To, either by itself or in connection with others, promote B and the City of C as a trading center to the end that the members of this corporation be thereby mutually benefited. .
- To, either by itself or in connection with others, sponsor and hold special trade events, trade promotions and trade fairs of all kinds, and to sponsor contests and give prizes in connection with any advertising or trade event or promotion, all to the end that the members of this corporation be thereby mutually benefited.
- To, either by itself or in connection with others, sponsor co-operative advertising efforts of all kinds through all media and to publish trade publications of all kinds and distribute same, all to the end that the members of this corporation be thereby mutually benefited.
- To, either by itself or in connection with others, in anywise protect its members against thieves, shop-lifters, burglars, purse-snatchers, forgers, grafters, embezzlers and dishonest employees.

- To, either by itself or in connection with others, inform its members of the credit standings of individuals, partnerships, firms and corporations seeking to do business with or engage the professional services of its members and to inform and protect its members against poor credit risks and delinquent debtors.
- To engage in, sponsor and hold schools for the training of the employees of the members of the corporation and to in anywise promote the training of such employees, all to the end that the members of the corporation be thereby benefited.
- To, either by itself or in connection with others, engage in lobbying, solicitation and any other endeavor to influence legislation at both the national and state levels and to likewise influence the actions of the governing bodies of the several counties and municipalities in the State of B to the end that the members of the corporation be thereby benefited.
- To, either by itself or in connection with others, establish and maintain a high standard of ethics and conduct among its members to the end that commercial and professional strife be unknown in B and the City of C.
- To solicit and make contributions to charitable, religious, fraternal, social, educational and other worthy causes to the end that the members of the corporations be thereby benefited.
- To enter into, make, and perform any contract of any kind and description necessary to effect the purposes for which this corporation is formed, and generally to perform all acts which may be deemed necessary or expedient for the proper and successful prosecution of the objects and purposes for which this corporation is created.

Your Certificate also states that your membership shall consist of individuals, partnerships, firms or corporations engaged in commercial or professional activities in B or its immediate vicinity, who pay the assessed dues and fees and who obtain the approval of a majority of the Board of Directors of the Corporation.

On August 10, _____, you amended your Certificate of Incorporation to add:

This corporation shall have no power to declare dividends, and no part of its net earnings shall inure to the benefit of any member of the corporation or to any other private individual. In the event of dissolution of the corporation, either voluntary or involuntary, all assets and properties which remain after the discharge of the corporation's liability shall be used or distributions by the Board of Directors for one or more of the objects and purposes set out in Paragraph 3 of the Certificate and shall be used or distributed for no other object or purpose whatsoever.

In your application, you state that your primary activity is to promote B Shopping Center and its merchants. This is done mainly through advertising campaigns and promotional events that highlight seasons, styles, and trends to showcase the unique aspect of the shopping center and what sets it apart from other shopping centers in the area, in an effort to attract shoppers. You state that this activity takes approximately 80 percent of your time and resources.

To promote various selling seasons, you state that you have created a 16-page newspaper insert, styled after a fashion magazine. The insert represents product from B stores and relates them to the current style trends. The particular products are identified as items for sale in named stores in B. In addition, you produce television advertisements, print advertisements, email blasts, and in-store posters and bag stuffers to support the promotion.

You state that B is an outdoor shopping center, on the edge of downtown C. You state that with regard to other shopping centers in C, two are approximately 4.5 miles distant from you, and one is slightly over 9 miles distant.

B is owned by D, a for-profit development company, which leases the properties to the various merchants who are your members. You state that all businesses in B are not required to be your members, but that all businesses in B are members except two. You also have members that are not in B, consisting primarily of banks that are in the immediate vicinity of B. You state that all your members and non-members in B receive and benefit from your activities, including advertising, promotion, and communications. You state that you have an active involvement with the private security firm operated by D that patrols B. Through that involvement, you inform merchants of security issues and serve as the liaison between individual merchants and security. The private security firm will come immediately to any store in B that summons it to check out a situation, such as shoplifting, thievery, burglary, purse-snatching, and forgery. You have also hosted merchant forums that address security and shoplifting issues.

Your Articles state that you will inform your members of credit standings of people and organizations seeking to do business with your members. You state that you field inquiries from your members regarding business references, and that through your contacts and efforts, you are able to find the truth of allegations and advise your individual members of the results of your informal investigations. You state that due to the sensitive nature of these inquiries, they are most often handled via telephone and personal conversation.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the regulations provides that 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.

Rev. Rul. 56-65, 1956-1 C.B. 199, holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses is performing particular services for individual persons. Such organization, therefore, is not entitled to exemption under section 501(c)(6) of the Code as a business league even though it performs functions which are of benefit to the particular industry and the public generally. The activities of the organization consist of the maintenance of plan rooms for the convenience of members, where plans and specifications for local construction projects, together with the names of general contractors bidding on specific projects, are filed.

Rev. Rul. 58-294, 1958-1 C.B. 244, discusses an organization that is organized and operated for the purpose of promoting uniform business, advertising, and fair trade practices in connection with the manufacture and sale of a certain patented product. Membership in the organization is limited to any person, firm, or corporation licensed to manufacture and sell the specified product. The organization owns the controlling interest in the corporation which holds the basic patents and sells to the members of the organization the materials and equipment necessary in the manufacture of the product. The revenue ruling holds that the organization does not qualify for exemption as an organization described in section 501(c)(6) of the Code because it is engaged in furthering the business interests of the dealers in the particular patented product.

Rev. Rul. 59-391, 1959-2 C.B. 159, holds that an organization whose membership is so restricted that each member represents a different trade, business, occupation, or profession does not qualify for exemption under section 501(c)(6) of the Code.

Rev. Rul. 64-315, 1964-2 C.B. 147, holds that an association of merchants whose businesses constitute a shopping center, and which expends its funds and engages exclusively in advertising in various newspapers and on television and radio in order to attract customers to the shopping center is not entitled to exemption as an organization described in section 501(c)(6) of the Code. The organization's advertising contains the names of member merchants and their merchandise, and the publication of a shopping news, advertising in other publications and also by radio and television, by which means the organization advertises the merchandise and the names of its members merchants, shows this to be the primary purpose and activity of the organization. Such activity constitutes the performance of particular services for members rather than an activity directed to the improvement of business conditions generally as required by the applicable regulations.

Rev. Rul. 67-77, 1967-1 C.B. 138, holds that an organization composed of dealers in a certain make of automobile in a designated area is organized and operated for the primary purpose of financing general advertising campaigns to promote, with funds contributed by dealer members, the sale of that make of automobile, and is therefore not exempt under section 501(c)(6) of the Code since it is performing particular services for its members. The revenue

ruling states that it relates to whether an organization which is organized and operated for the primary purpose of financing advertising campaigns to promote the sale of a particular make of automobile is entitled to exemption under section 501(c)(6).

Rev. Rul. 68-264, 1968-1 C.B. 264, defines a particular service for the purposes of section 501(c)(6) of the Code as including an activity that serves as a convenience or economy to the members of the organization in the operation of their own businesses.

Rev. Rul. 73-411, 1973-2 C.B. 180, in discussing the exempt status of a shopping center merchants' association under section 501(c)(6) of the Code, describes in detail the history of section 501(c)(6) and the types of organizations described therein. In the case of a chamber of commerce or similar organization, the common business interest required under section 1.501(c)(6)-1 of the regulations is usually the general economic welfare of a community, and it has been accepted that an organization seeking exemption under section 501(c)(6) as a chamber of commerce must be one whose efforts are directed at promoting the common economic interests of all the commercial enterprises in a given trade community. Trade associations or business leagues under section 501(c)(6) are similar to chambers of commerce, except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry. The revenue ruling also stresses that membership in section 501(c)(6) organizations is voluntary and open generally to all businesses and professional persons in the community. The revenue ruling clarifies Rev. Rul. 64-315, *supra*, by stating that in no event should it be construed as implying that a merchant's association whose membership is restricted to the tenants of a one-owner shopping center and their common lessor, and whose activities are directed solely to promoting the general interests of its members, may be exempt under section 501(c)(6). The revenue ruling also states that where the organization's activities include those of a landlord-tenant association and as such directly assist the owner in facilitating the management and operation of his real estate enterprise, exemption under section 501(c)(6) is precluded. Membership is voluntary and open generally to all business and professional men and women in the community. The revenue ruling states that it has been accepted that an organization seeking exemption from federal income tax under section 501(c)(6) as a chamber of commerce or board of trade must be one whose efforts are directed at promoting the common economic interest of all the commercial enterprises in a given trade community. The revenue ruling also defines trade associations or business leagues as similar to chambers of commerce or boards of trade, except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry.

Rev. Rul. 74-147, 1974-1 C.B. 136, describes an organization whose members represent diversified businesses that own, rent, or lease one or more digital computers produced by various manufacturers, without regard to identity of the manufacturer of any such computer. The sole activity of the organization mentioned in the revenue ruling is the holding of semi-annual conferences, at which operational and technical problems relating to computer use are discussed. The revenue ruling concludes that the organization's primary objective, provision of a forum for the exchange of information which will lead to the more efficient utilization of computers by its members and other interested users, improves the overall efficiency of its

members' business use of computers and qualifies for exemption under section 501(c)(6) of the Code.

Rev. Rul. 83-164, 1983-2 C.B. 95, describes an organization whose purpose is to conduct conferences for the dissemination of information concerning computers manufactured by one specific company, M. Although membership is comprised of various businesses that own, rent, or lease computers made by M, membership is open to businesses that use other brands of computers. At the conferences, presentations are given primarily by representatives of M, as well as by other experts in the computer field. Problems related to members' use of M's computers are also discussed and current information concerning M's products are also provided. The revenue ruling holds that by directing its activities to businesses that use computers made by one manufacturer, the organization is improving business conditions in a segment of a line of business rather than in an industry as a whole and is not exempt under section 501(c)(6) of the Code. The revenue ruling concludes that by providing a focus on the products of one particular manufacturer, the organization is providing M with a competitive advantage at the expense of manufacturers of other computer brands.

In National Muffler Dealers Ass'n v. U.S., 440 U.S. 472 (1979), the Supreme Court held that an organization whose membership consisted of the franchisees of one brand of muffler did not constitute a line of business within the meaning of section 501(c)(6) of the Code because a single brand represented only a segment of an industry.

The information you have submitted establishes that your primary activity is to promote B Shopping Center and its merchants, primarily through advertising campaigns and promotional events. Advertising that carries the names of members, however, constitutes the performance of particular services for members. In this matter, you are similar to the organization described in Rev. Rul. 64-315, supra, which was denied exemption under section 501(c)(6) of the Code. As stated in Rev. Rul. 68-264, supra, the term particular service includes an activity that serves as a convenience or economy to the members of the organization in the operation of their own businesses. The argument described in Rev. Rul. 56-65, supra, is also applicable to you because your performance of particular services is your primary activity. Since your primary activity is the performance of particular services for your individual members, you are precluded from recognition of exemption under section 501(c)(6) pursuant to section 1.501(c)(6)-1 of the regulations.

Since you are not structured along particular industry or business lines, your right to exemption under section 501(c)(6) of the Code, if any, must rest on your characterization as a chamber of commerce or board of trade or similar organization. Because your Articles state that your membership shall consist of various individuals and organizations engaged in commercial or professional activities in B or its immediate vicinity, your efforts are thereby restricted to and directed at organizations and individuals doing business with and in B Shopping Center rather than being directed at promoting the common economic interests of all the commercial enterprises in your particular trade community. A particular trade community is usually defined as an area bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or unit thereof.

As discussed and made clear in Rev. Rul. 73-411, supra, membership in and enjoyment of privileges in an organization exempt under section 501(c)(6) of the Code are not to be restricted or limited to a select number of entities within the described community or industry. Membership in a trade association or business league, as differentiated from a chamber of commerce, is both voluntary and open generally to all entities within a particular line of business or closely related lines of business. Although your membership is restrictive in a different manner than the one discussed in Rev. Rul. 59-391, supra, the fact that you only have B merchants and a few organizations in close proximity to B as be your members indicates that your membership is not considered to be "voluntary" within the meaning of Rev. Rul. 73-411, and is not within the intendment of section 501(c)(6). You are not similar to the organization described in Rev. Rul. 74-147, supra, because your purpose is to promote your member's interests only rather than providing, as an example, for the exchange of information.

It is clear that your activities are geared toward a particular group of businesses in the same manner as the organization denied exemption under section 501(c)(6) of the Code in Rev. Rul. 83-164, supra. By directing your activities solely to this group, you are engaged in furthering the business interests only for this group of merchants, not to industries in C as a whole.

Similar to the organization discussed in Rev. Rul. 58-294, supra, your activities are furthering the business interests of your members. These business interests, moreover, are in competition with the same business interests for other similar organizations in the area of C. One of the key considerations for exemption under section 501(c)(6) of the Code is whether an organization's activities give a competitive edge to its special programs as opposed to other similar special programs carried on by similar organizations in a given trade community. The fact that your benefits are available only to merchants in the B Shopping Center and that the B Shopping Center is only one out of several shopping centers in C, shows that you benefit only a segment of the several shopping centers in C rather than benefits to all the shopping centers in C as a whole. Only your members are being advertised in your publications. Your members are in direct competition with other shopping centers in C which are not admitted to your membership, and derive no benefit although they are in the same industry in the same trade community. As discussed in National Muffler Dealers Ass'n v. U.S., supra, benefits essentially for a particular segment of an industry precludes exemption under section 501(c)(6). In this respect, you are more like the organization denied exemption under section 501(c)(6) in Rev. Rul. 67-77, supra.

These reasons preclude your exemption as a chamber of commerce or board of trade or similar organization under section 501(c)(6) of the Code. In addition, since you are not structured along particular industry or business lines, you are not a trade association or business league under section 501(c)(6) of the Code.

Therefore, for the above reasons, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit

the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement and any supporting documents to this address:

Internal Revenue Service
TE/GE

1111 Constitution Ave, N.W.
Washington, D.C. 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he received your fax.

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

Sincerely yours,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements