



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201018015**
Release Date: *5/7/2010*

Date: December 15, 2009

UIL: 501.06-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120
Tax Years:
All

Dear _____ :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

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.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, 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, you should 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

Letter 4040 (CG) (11-2005)
Catalog Number 476352

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,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

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



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WASHINGTON, D.C. 20224

Date: December 15, 2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL: 501.06-00

Legend

- A. State of Incorporation
- B. Date of incorporation
- c. Dollar Amount
- d. Dollar amount
- e. Application fee
- F. Name
- H. Membership period
- j. Dollar amount
- k. Dollar amount
- L City
- M. Name of Organization
- N. Date of first meeting
- o. Dollar amount
- p. Dollar amount
- Q. Location
- R. Location
- T. Website
- V. Name of Organization

Dear :

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

Issue:

Do you qualify for exemption under section 501(c)(6) of the Code?

Facts:

You were incorporated in the State of A on B to provide a forum for members to learn about early stage investment opportunities with entrepreneurial companies.

Bylaws, Article III, Purpose, section 2, states that you are organized to provide a forum or members to meet entrepreneurs with innovative concepts products, services projects that need investment capital.

Your membership is offered on an invitation-only basis. Members are required to be accredited investors as defined by the SEC. The term accredited investor is defined under the Securities Act of 1933 as "any natural person whose individual net worth or joint net worth with that person's spouse exceeds \$1,000,000" and "any natural person who had an individual income in excess of \$200,000 in each of the most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching that income in the current year.

To qualify for membership, an individual must share your vision and be willing to actively contribute to that vision. While there is no upfront commitment for investment funds required of members, there is an expectation each member will invest a minimum of d into promising growth ventures over the course of several years. In addition to capital investment, members are expected to invest time and their wisdom and guidance in aspiring entrepreneurs.

Your membership fees have been set at c for the period of H. The benefits of becoming a member include the increased exposure to a wide range of investment opportunities, the opportunity to share the investment evaluation and due diligences process with people with a broad range of skills and expertise, and the opportunity to stimulate the local economic development and hopefully make a net profit by investing in the local community.

Per your membership application and agreement, you facilitate the introduction of entrepreneurs to potential investors through presentations and other mechanisms. You consist of individual E interested in financing privately held companies or ventures typically in an early stage of development. It is also indicated that your meetings and communications are focused on investment pursuits.

Page 2 of the form 1024 states that you provide attractive private company investment opportunities to members, while enhancing local and regional economic prosperity through financing and growth of businesses in the Greater L Valley area. You provide a forum for members to learn about early stage investment opportunities with new start up companies. You will host approximately six private dinners each year featuring presentations for early stage companies seeking private financing. Individual E decide whether or not they are interested in investing in any of these companies. You do not make any investments. In addition to making a capital investment in a start up company, an individual E may also assist the new company in developing a business plan and in developing business skills necessary to grow and be successful. Each successful new business facilitated by an E investor strengthens the economy for the entire region. You will focus on multiple (virtually unlimited) lines of business within a geographic area, with common link of being potentially "high growth" ventures. Investments are typically high risk and high return.

Your dinner meetings and planning for these meetings constitute your primary activity. The meetings are planned and conducted by members, and are held at various locations in the local area. Prior to each dinner meeting, a screening committee will interview the top-rated prospective start up businesses based upon submitted applications. In order to be selected to present at the bi-monthly membership meetings, all prospective businesses must first submit an application/business plan on I. There is an e for submission of an application. All applications are reviewed for completion and appropriateness by the Chairman of screening committee. If the business idea is not well presented, then feedback is provided to improve the presentation. These applicants can then resubmit after correcting their deficiency in their business model. The number of applications are then reduced to 10 for the screening committee to review. The screening committee then reviews these applications and related materials to select 3 to 4 applicants, which are then invited to present a 40- 60 minute live face-to-face presentation and question/answer session with members of the screening committee. At this screening committee meeting, prospective businesses are evaluated by the screening committee for the quality of their business plan, management and potential economic growth. At the end of this meeting the screening committee will decide on the two most promising applicants, which are then invited to present at the next membership meeting.

After the presentations at the dinner meetings, individual E perform their own due diligence on the companies to determine if they wish to make an investment.

Those members that have an interest in a particular business will follow and participate in the due diligence process for a prospective investment. Typically, the actual investment terms will be negotiated as a group of these individuals and they will invest separately from you.

E typically invest between d and j per transaction individually, and from k and o as a group. They invest in one to four transactions per year. On average, E are patient, with an average term for holding an investment of five years. For the risk and added value they provide, E seek returns of at least ten times their investment. In order to achieve this investment return, E generally require an ownership position of 25 to 50 percent of the companies in which they invest.

After investment, some of your members have become involved in portfolio companies directly by being board members or through mentoring and advisory relationships.

You also maintain an extensive web site, I, that indicates your members invest in companies that offer exceptional opportunities for high returns on our investment. This is indicated on your home page and your mission statement included in your brochure with the following statement:

"M is an E investment group located in Q. M provides attractive private company investment opportunities to its members, while enhancing economic prosperity through the financing and growth of local businesses"

Additionally, you host periodic E seminars and conferences.

You also operate in association with V, another 501(c)(6) organization, and its strategic plan.

You received two start up grants from local government agencies, p from Q and p from the City of R in 2008. Future financial support will come primarily from members dues, assessments,

and payment for the periodic dinner meetings. No further government grants are anticipated.

Law:

Section 501(a) of the Code provides for the exemption from Federal income tax of organizations described in section 501(c).

Section 501(c)(6) of the Code provides exemption from Federal income tax for "Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), 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 Income Tax Regulations 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 the 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."

In Rev. Rul. 59-391, 1959-2 C.B. 151, exemption under 501(c)(6) was denied to an organization composed of individuals, firms, associations, and corporations, each representing a different trade, business, occupation, or profession. The organization was created for the purpose of exchanging information on business prospects and had no common business interest other than a desire to increase sales of members.

The revenue ruling found that the organization's activities were not directed to the improvement of business conditions of one or more lines of business, but rather to the promotion of the private interests of its members.

In Rev. Rul. 66-338, 1966-2 C.B. 226, exemption under Section 501(c)(6) was denied to an organization formed to promote the interests of a particular retail trade. The organization advised its members in the operation of their individual businesses and sold supplies and equipment to them. The revenue ruling found that the organization's activities constituted the performance of particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade as a whole. The activities also constituted a business of a kind ordinarily carried on for profit even though the activities were conducted on a cooperative basis and produced only sufficient income to be self-sustaining.

In MIB, Inc. v. Commissioner of Internal Revenue, 734 F.2d 71 (1986), an organization whose membership consisted of insurance companies was denied exemption as a business league under section 501(c)(6) of the Internal Revenue Code. The principal activity carried on by MIB was the maintenance and operation of a computerized system for compiling, storing and distributing information about applicants for life insurance. MIB argued that its activities created a deterrent to fraud which created benefits to the industry through reduced investigation expenses and reduced losses due to misclassification of applicants. The Court held MIB's activities by their nature

consisted of rendering particular services for individual member companies and served to benefit the individual members' businesses. The Court also stated that even though the services produced various indirect and intangible benefits for the industry as a whole, the fact remained that the rendered services were in form and substance particular services for individual member companies.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

Analysis of Law:

Section 501(c)(6) provides that an organization is not exempt if it serves to benefit any individual. You are formed to provide attractive investment opportunities for your members; thus, you inure to the benefits of your individual members. As stated in section 1.501(c)(6)-1 of the Regulations, a business league is an association of persons having some common business interest; 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. Your members do not share any common business interest and your activities are considered particular services to your members that would not qualify you for exemption under Section 501(c)(6).

You are similar to the organization described in Rev. Rul. 59-391, 1959-2 C.B. 151. Like this organization, your members do not appear to have a common business interest other than a mutual desire to successfully invest in lucrative businesses. Your membership consists of accredited investors and like the members of the organization in this revenue ruling, your members are not in competition with each other. Furthermore, your screening process for presenters at your meetings reinforces the fact that your goal is to find the best investment opportunities for members. The activities are not directed toward the improvement of business conditions of one or more lines of business, but rather to the promotion of the private interests of your members.

You are also like the organization described in Rev. Rul. 66-338, 1966-2 C.B. 226. You are providing the service of matching willing investors with a willing organization that, in addition, you are providing investment type services to members including conducting due diligence on potential companies members may invest in. You are providing to members detailed financial analysis on potential investment opportunities and providing a forum for these businesses and members to meet. These activities also constitute a business of a kind ordinarily carried on a for profit basis.

You are also similar to the organization described in MIB, Inc. v. Commissioner of Internal Revenue, 734 F.2d 71 (1986). You believe that promoting investment opportunities that may result in local and regional economic prosperity is an exempt 501(c)(6) purpose. However, like the organization in the court case, the fact that the economy may receive some benefits does not negate the fact that in form and substance, your activities constitute particular services to your members.

According to the findings in Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), you have the burden of proving that you satisfy the requirements of the particular exemption statute. Whether you meet this requirement is a question of fact. The facts indicate that your

primary activities are providing investment type services to members. Thus, you do not appear to qualify under Section 501(c)(6).

Applicant's Position:

Your response dated May 1, 2009 states that your purpose is to provide improved business prospects to those start-up and existing businesses in the greater Q Valley and Northern A. Your overall goal is to improve the economic prospects for potential high-growth companies in the area. You additionally indicated that your specific line of business is that with the common link of potentially "high-growth" ventures within a geographic area.

You disagree that you are similar to the organization described in Revenue Ruling 59-391, 1959-2 C.B.151; because your focus is to provide an improved environment for economic development of potentially high-growth free enterprise ventures through education of investors. The fact the member's hope to obtain financial gain from possible investments in an unavoidable byproduct of the free enterprise system. You do not exist to just be of service for your members, but rather to improve "E Investments" in your geographic area as there were no such groups in your local market prior to your formation. The screening process is both educational for the entrepreneur and a means of facilitating the maximum potential investment in a limited amount of available time.

You also believe you are like the organization described in Revenue Ruling 69-634, 1969-2 C.B. 124. You believe any benefit to members is merely one of the results that flow from the effort to improve business conditions in the community.

You believe you are like the organization in Revenue Ruling 76-207 1976-1 C.B. 190; because your activities of assisting entrepreneurs develop and fund their businesses are primarily improving business conditions in the community. Any benefits to members you insist are incidental.

Although you generally cannot use Technical Advice Memoranda issued by the Service as precedent, you cited IRS TAM 9128003, 1991 WL 779112; to support why you qualify under Section 501(c)(6). You believe you are operating like this organization because your activities of providing services to members is insubstantial compared to the improving of business conditions within the meaning of 501(c)(6).

You provided names of other E Investment Groups that may be exempt under Section 501(c)(6). You believe because their activities may be similar to yours that you should qualify under Section 501(c)(6).

Service Response to Applicant's Position:

You state that you are improving business prospects to those start-up and existing businesses in the local area, which have the most significant economic growth potential. However, you did not substantiate how your activities are directed to the improvement of business conditions within the meaning of Section 501(c)(6).

You also state that you are not primarily providing any investment services to your members; however your stated purposes in the Articles of Incorporation, information on your web site,

information in your membership application and in the Form 1024 as well as in your responses to additional information letters indicate that you are primarily providing members the means to make sound and lucrative investments in private start-up companies.

Although the specific details are different, you are still similar to the organization described in Rev. Rul. 59-391, 1959-2 C.B. 151; like the findings in this revenue ruling your members do not appear to have a common business interest as defined in Section 501(c)(6). You are primarily providing members the financial services of evaluating the profitability potential of selected businesses. Like the organization in the revenue ruling, you are serving the private interests of your members; the only common business interest that your members have is a mutual desire to minimize risk and increase their return on investments.

You are also not like the organization in Rev. Rul. 69-634, 1969-2 C.B.124. Your method of operations indicates that any improvement in business conditions within the meaning of 501(c)(6) is secondary to your primary purpose of providing investment services that minimize risk and increase return on investments for members.

You are not like the organization described in Rev. Rul. 76-207 1976-1 C.B. 190; since your primary purpose as evidenced by your activities is to provide investment services to members; any community benefit resulting in the improvement of business conditions as described in Section 501(c)(6) is incidental to this purpose of providing these investment services and investment opportunities to members.

You are also not like the organization described in TAM 9128003, 1991 WL 779112. You have not established exemption under 501(c)(6) like the organization described in the TAM. Furthermore, your primary activities are not directed toward the improvement of business conditions within the meaning of Section 501(c)(6), but rather to the promotion of the private interests of your members.

Finally, you believe you are exempt under Section 501(c)(6), because other similar organizations are exempt under section 501(c)(6). However, each determination is based on facts and qualification or operations on another organization have no bearing. According to the findings in Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), you have the burden of proving that you satisfy the requirements of the particular exemption statute. Whether you meet this requirement is a question of fact. The facts indicate that your primary services are providing investment types services to members. Thus, you do not appear to qualify under Section 501(c)(6).

Conclusion:

Based on the facts you have provided us in your application for exemption, you are not operating in accordance with 501(c)(6). Your members have no common business interest and your primary activities are the provision of investment type services to individuals; this also constitutes a business of a kind ordinarily carried on a for-profit basis. Therefore, you are not exempt under section 501(c)(6) of the Internal Revenue Code.

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 that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, 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 to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

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 or she 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,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements