



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201105048**
Release Date: 2/4/11
Date: November 9, 2010

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)(6). 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 47635Z

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

Letter 4040 (CG) (11-2005)
Catalog Number 47635Z



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: September 23, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

N =
O =
P =
Q =
R =
y =
z =

UIL:

501.06-01

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? No, for the reasons described below.

Facts

You were incorporated on y, in the state of z. The purposes outlined in your Articles of Incorporation state, in part, "to solicit recognition and acceptance of beverage industry commerce and to promote cooperation and communication between the members thereof."

Your Bylaws and application for exemption describe your purposes and objectives, in pertinent part, as follows:

Realizing that the success of the Member's individual businesses depends largely upon a strategically diversified product portfolio, and that the best brand sets can be obtained only by a cooperative effort on the part of those engaged in an association, this voluntary trade association is created and shall exist for the

following objectives:

- A. to promote/encourage better communication between potential suppliers and Members
- B. to solicit recognition and acceptance of the Members as a desirable and effective part of beverage industry commerce
- C. to encourage logistical and contractual cooperation so as to be seen as a desirable and cost effective conduit of products to market
- D. to improve business relations between all members of the industry
- E. to where and when appropriate provide consulting services to the Members (for no fee) and current and future suppliers to provide a framework for commerce consistent with the Bylaws as well as with consideration of both federal and state statutes and regulations governing commerce on said products. The consulting topics are primarily in the areas of sourcing, relationship building, business modeling, and contractual execution as these topics relate to the beverage industry.
- F. to work in unison to improve our collective and separate service to the constituents we serve
- G. to carry out the above purposes under Articles and the Bylaws adopted for the regulation of the Corporation
- H. to facilitate the survival of new brands
- I. to employ, contract for, or otherwise obtain the services of agents to perform all services required in connection with the carrying out of its aforesaid purposes

Your Bylaws state the qualifications for membership as, "any person, firm or corporation legally and actively engaged in the wholesale distribution of beverages in the State of z and which is not a parent, subsidiary, affiliate, or under common control or ownership of another Member may become a voluntary Member upon their written agreement to abide by the Articles and these Bylaws, which includes the voluntary contributions contemplated herein to defray the costs and expenses incurred in carrying out the purposes of the Corporation."

Your attachment to the Form 1024 states members of your organization serve on various discipline teams to accomplish the goals and services of the organization as listed above. These teams include a business research and development team, logistic team, and a legal and finance team. The teams were described as follows:

Business and Research Team – Members review various solicited and unsolicited beverage firms for fit within the "Branding Partnering" criteria established for brand consideration within the Organization's footprint. This team meets monthly and updates status of desirability – contact – next steps relative to presentation and acceptance by the Organization's members.

Logistic Team – Members meet for the purpose of creating a redistribution model for products that will be less than truckload quantities to individual Organization members. They attempt to optimize freight and supply chain dynamics relative to product flow to the market. In addition, they are responsible for creating web footprint and product order/entry mechanics.

Legal Finance Team – Members meet on an as needed basis for supplier contract negotiations. Included in this contract work is outside counsel that has expertise in the franchise field. The team is also responsible for creating annual budgets, calling meetings of Organization members and filing all necessary paperwork to keep the organization in proper legal standing.

You provided the following description of your consulting services to members:

We discuss companies who have contacted either individual members or the group as a whole about using our distribution network to bring their products to marketplace in z. We view industry data to assess if it makes economic sense to consider. We discuss how such products fit into our screening process. We then direct out various team committees to follow up activity with the potential or existing supplier.

You provided a copy of your presentation materials which included the following:

What is the Group

- Organization dedicated to creating a partnership with all of its suppliers
 - Sales Growth through the best possible distribution network in z
 - Coordinated selling effort amongst wholesalers
 - Efficient communication and sharing of selling materials amongst partners
 - Latest marketing equipment available: Selling Tools, Sign Making Equipment, etc.
 - Cost optimization through centralized distribution points; share of mind; and professional organizations

Best of Both Worlds

- Simplified Logistics
 - Has established 5 re-distribution “hubs” where suppliers will deliver all beer needed to service State until sufficient quantities make financial sense for individual wholesaler shipments.
 - Reduces FOB on product
 - Simplifies Brewer payment and touch points from an operational perspective
 - Wholesalers then pick up their orders from their designated “hub.”
 - Centralize communications for forecasting and ordering products

Business Development Wholesaler Brand Chart

- Lost N to parts of the Q
 - What do we need to do better to ensure this doesn't happen again with O
 - Didn't get the feeling of commitment to the craft segment
 - Image of the R is not what they are looking for
- Smart Access Program with P appears to be working well

Business Development Brand Funneling Findings

- We need to be stable on what we represent to suppliers
- Our main focus will be on sourcing Beer Brands

Law

Section 501(c)(6) of the Internal Revenue Code of 1986 provides exemption from Federal income tax for business leagues 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 Regulation states 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.

Revenue Ruling 56-65, 1956-1 C.B. 199 denied exemption to a local organization whose principal activity consisted of furnishing particular information and specialized individual service to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses. These services are but not limited to; promoting efficiency among members by producing a publication that provides a list of specific projects from whom bids and quotations may be obtained by members. Also a labor committee is maintained within the organization to settle labor disputes for members.

Revenue Ruling 61-270, 1961-2 C.B. 112 held that an organization formed and operated primarily as an employment agency for the benefit of members is engaged in a regular business of a kind ordinarily carried on for profit and is rendering particular services for individual members; and thus, activities of this nature preclude exemption under 501(c)(6) of the Code.

Revenue Ruling 66-338, 1966-2 C.B. 226 describes a nonprofit organization formed to promote the interests of a particular retail trade. Field representatives of the organization call on the members to consult with them and advise them on their individual business problems. The advice furnished includes assistance in planning modernization and layouts of the members' stores. As part of their calls, the field representatives also inform the members about supplies, equipment, and additional services which the organization can make available to the members at low prices. This includes office and store operating supplies, store fixtures and display accessories, store layout and merchandising services, and electronic management services.

The activities described above provide the members of the organization with an economy and convenience in the conduct of their individual businesses by enabling them to secure supplies, equipment, and services more cheaply than if they had to secure them on an individual basis. Therefore, these activities constitute 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. Consequently, the organization was denied exemption under section 501(c)(6) of the Code.

Revenue Ruling 68-264, 1968-1 C.B. 264 denied exemption to an organization whose services to members and nonmembers alike included quotations of freight rates, rules, and practices and investigations of loss damage and overcharge claims. The ruling defines a particular service for the purposes of section 501(c)(6) of the Code as being an activity that serves as a convenience or economy to the members of the organization in the operation of their businesses. The operation of a traffic bureau for members and nonmembers is a clear convenience and economy to them in their businesses, resulting in savings and simplified operations.

Revenue Ruling 76-409, 1976-2 C.B. 154 denied exemption to an organization whose principal activity is the publication and distribution of an annual directory consisting almost entirely of members' names, addresses, and telephone numbers. The directory is distributed free to those members of the business community who are likely to require the services of the profession. It was held, the publication and distribution of a directory containing the names and addresses of members constitutes advertising for individuals, and therefore, is the performance of particular services to members rather than an activity aimed at the improvement of general business conditions.

In *Apartment Operations Ass'n v. Commissioner of Internal Revenue*, 136 F. 2d 435 (1943), the court denied exemption as a business league. The organization was an apartment owners' association which regularly carried on a business of a kind ordinarily conducted for profit and performed particular services for individual persons. These services consisted of acting as a clearing house for information about tenants, including the operation of apartment houses, and about the legislation affecting the business; gave council and advice to its members and did what it could to promote their welfare; secured information about prices for necessary goods for the apartments; and represented its members in labor disputes and negotiations. The Court held the organizations primary activity was one of a business regularly carried on for profit and the organization performs particular services for individual persons. There is no showing that business done or the activities described were merely incidental to the organization's total activities.

Application of Law

You are not described in IRC 501(c)(6) because you were formed to provide particular services to your members and therefore, operate similar to a for profit business.

You are not described in Section 1.501(c)(6)-1 of the Income Tax Regulation because the facts show you are not formed to promote the common business interests of a particular industry or trade, but rather you limit your promotion to your members specific wholesale businesses. You engage in a regular business of the kind ordinarily carried on for profit in that you provide specific service that would otherwise be necessary for each individual member to conduct on their own or through another entity. For example, you negotiate contracts on behalf of your members, thereby

relieving the member from the need to negotiate the contract. In addition, you established distribution hubs which reduced members' costs and simplified operations for them.

Like the organization in Revenue Ruling 56-65 you are providing a particular service to your members and not benefiting the common business interests of all businesses involved with your industry. As in the revenue ruling, you present information to your members about specific suppliers with whom business deals and contracts can be obtained. You work collectively, within your membership, to represent what the supplier looks for in their current or potential wholesaler in order for members to more easily enter into business dealing and contracts with suppliers. This activity constitutes performance of a particular service to your members with the intent of providing efficiency of operations and economies of scale for members. You are providing services to members that are similar to a business that is ordinarily carried on for profit.

Similar to the organization in Revenue Ruling 66-338, your organization was formed to provide an economy and convenience in the performance of their individual businesses. You create efficient redistribution points for product movement to members thus allowing manufacturers' products to have lower cost and better market pricing. In addition, you state that supply contracts are negotiated for the group as a whole versus each negotiating their own contract. By promoting your members services and capabilities to current and potential suppliers, you are providing the members with a service that they would otherwise have to secure on their own. Although the activities of your organization may not be similar to the specific activities of the revenue ruling, denial of exemption based on the performance of a particular service for members makes the ruling relevant to your activities.

Your formation of redistribution points and the negotiation of contracts is similar to that of the organization in Revenue Ruling 68-264. You state that the operation of the redistribution points for members provides for cost optimization and allows for centralized communications in product forecasting and ordering, resulting in savings and simplified operations. This is a clear indication that your organization is performing the functions of a for-profit business by acting as a delegate to current and potential suppliers for the benefit of your members. In addition, the redistribution points are a convenience to members with the underlying purpose of generating higher margins through cost optimization. Other non-member organizations involved in your particular industry can not reap the benefits of your redistribution points or contract negotiations, and consequently, are at an operational disadvantage to the members of your organization. Therefore, your organization is not promoting the common business interests of your industry as a whole.

Also similar to Revenue Ruling 68-264, you state that your intent is for suppliers to see your group as an option for entry of their products into z. You provide detailed information on each members' capabilities and performance data from a single source. You provide suppliers with insights and language which will be appealing to your members and encourage the suppliers to work with your members. You also supply your members with consulting services on various topics related to your industry to improve their individual businesses. You are providing particular services to members that are not consistent with the promotion of the common business interest of your industry as a whole.

You are like the organizations in Revenue Ruling 61-270 and Revenue Ruling 76-409. These organizations were denied exemption under 501(c)(6) of the Code because the publication and distribution of a directory containing the names and addresses of members constitutes advertising for the individuals listed, and in turn, the performance of particular services for members. In essence, the organizations acted as employment agencies for their members. Although your organization does not publish a directory, it does advertise your members directly to current and future suppliers in order to secure beneficial business deals for members. This creates a convenience and economy to the individual members that they would otherwise have to purchase independently.

You are like the organization in *Apartment Operations Ass'n v. Commissioner of Internal Revenue*, 136 F. 2d 435. Like the organization in the case, you have stated you provide legal services on contract issues and provide consulting services for members. These services are those of a business ordinarily carried on for profit and render particular services for individual members rather than promoting the general business conditions of the industry as a whole.

Applicant's Position

You stated that your principal intent is for future suppliers to see your group of wholesalers as an option for entry of their product into z. You stated you do not perform any service or agreement with suppliers since it would create anti-trust issues. You are merely a conduit for contract language which may be appealing to your members. Regarding the consulting services and redistribution points for members, you noted that you do not provide services for members such as acting as a consultant, freight cost optimizer, or redistribution center; but instead create goodwill among members and suppliers to facilitate trade that is good for each party and the industry.

Regarding your response to your similarities to the organization in Revenue Ruling 66-338, you indicated you are not similar to the organization in the ruling because you have no field representatives who visit or provide services of any kind to any distributor. Also you do not see yourself falling under the ruling because you do not sell supplies, equipment, furnish formal consulting services, etc.

Service's Response to Applicant's Position

We agree that you act as a conduit for contract language between your members and current or potential suppliers. A conduit is defined as any channel, or means, whereby something is passed on. You are passing on information to suppliers about the businesses and capabilities of your members. You are providing services to your individual members that offers efficiency of operations by allowing the members to effectively market their services and capabilities to suppliers. This creates a clear convenience to your members and is an activity that is akin to a service provided by a business that is normally carried on for profit.

Your statement that you do not provide particular services to members through consulting activities, acting as a redistribution center, or optimizing freight costs differs significantly from the provided information in your bylaws and application for exemption. The facts and totality of the information provided clearly show you provide for efficient operations, amplified business opportunities, and cost optimization for your members. The nature of the contact with suppliers of your industry is not in any way promoting the common business interests of your industry as

a whole, but rather focused on promoting specific members.

Revenue Ruling 66-338 does apply to your organization, as distinguished from your response regarding the ruling. The ruling discusses an organization that provides members of the organization with an economy and convenience in the conduct of their individual businesses. Although the nature of the business may differ from your organization and the activities may not be exactly what you do for members, you too provide your members with economy and convenience in the conduct of their individual businesses. The facts show you serve as a conduit linking members with suppliers. You established a distribution hub for members to use. You negotiate contracts on behalf of your members as a whole so that separate negotiations by individual members are not needed. You provide information to suppliers on member capabilities and performance.

Conclusion

The facts clearly show you are not operated as a business league. Your activities are not directed to the improvement of business conditions of one or more lines of businesses, or any other purpose defined in section 501(c)(6). Rather, your activities and purposes are directed at the improvement of your members businesses.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(6) of the Code and you must file 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 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*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

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,

Robert S. Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892