



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201213032**
Release Date: 3/30/2012
Date: January 6, 2012
UIL Code: 501.06-00
501.06-01
501.04-00

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

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)(4) or 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 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.

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

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



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: November 9, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

C = state

D = date

G = city

H = organization

K = country

UIL:

501.06-00

501.06-01

501.04-00

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)(4) or 501(c)(6). The basis for our conclusion is set forth below.

Issues

1. Do you qualify for exemption under section 501(c)(6) of the Code? No, for the reasons stated below.
2. Do you qualify for exemption under section 501(c)(4) of the Code? No, for the reasons stated below.

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

Facts

You incorporated in state of C as a mutual benefit corporation on D. The specific purposes for which you are formed are those authorized under section 501(c)(6) of the Internal Revenue Code and include promoting, protecting and preserving the general welfare and interests of member businesses of the G, and facilitating trade and relations between G member businesses and organizations within the United States business community at large. Your mission is to introduce and connect the emerging markets and sectors as well as develop partnerships and opportunities between G and the United States.

Article III, Section 3.01, of your bylaws states that you were formed to improve business conditions of one or more lines of business. Article IV of your bylaws states that you shall have no members.

You are a subsidiary of H, which is a non profit regional business league that operates to assist small and medium sized businesses located in G. H was formed and is funded by the governmental unit of G. You are funded % by H and report to H on a regular basis. Your only director and your current president was appointed by the president of H.

You describe G as one of the strongest economic regions within K, currently hosting most of the small and medium size businesses in the country. Due to this economic strength you are able to introduce the most creative and innovative K products to the United States market.

Your initial activities were listed as:

- developing relationships between United States and K companies for increased trade and investment volume and profit in the United States,
- to promote the G name to be synonymous with the highest quality of K industry,
- to identify new markets in the United States and G for penetration,
- to act as a liaison with distributors to develop a marketing strategy to reach both United States and K companies,
- to establish and maintain executive level relationships with both United States and G based companies and help to promote new trade activities.

You later revised your application for exemption. You will have two purposes; 60% of your time is devoted to supporting export to the United States from small and medium sized businesses in G and % of your time is spent on promoting investment in small and medium sized businesses in G. You currently provide services to small and medium businesses in G and the United States in trade promotions, investment and mutual

exchange. Trade promotion includes marketing consultation, introducing new and innovative products and business opportunities in the United States, organizing and operating trade shows and conducting market research on new technology and industry trends. You have branch offices supporting the _____ and _____ industry and are currently supporting around _____ companies with the expectation that number will grow.

To support exporting you will provide research and marketing support. This will include analysis reports on international market trends, support for research on certification requirements in the United States, and support for research on tariff and trade practices in the United States. You will organize trade shows in the United States and in G for member businesses, consult on product and business development, and initiate meetings to match United States buyers with G companies. G company participants will benefit by participating in trade shows they otherwise would not be able to accomplish on their own as well as saving time and resources on marketing.

In promoting investment you will provide information and international exchange. This will include introducing G projects and investment opportunities to potential investors and developers and providing investors with on site presentations as well as benefit packages including possible government support. You will support companies that want to establish businesses abroad in areas mostly including (but not limited to) factories, human resources, research and development centers, logistics and incubators. You intend on developing sister relationships between US states, cities, universities and organizations with the intent to create a mutual exchange network among industry leaders to share and develop new business opportunities. G company participants will benefit by having potential financing sources and partnerships with United States investors. Also, if the investment is achieved under a special benefits package of G certain tax and regulation benefits would be available. Any expansion will contribute more for the economy of the United States as jobs would be created through the successful operation of G companies stateside.

In describing how businesses you select would aid in employment opportunities in the areas in which those businesses are established you stated it would depend on the type of company or project selected whether or not job opportunities would be open to everyone. For training and employment you assist K companies until they can set up an official business base in the United States. Once they are established they will look to hire US citizens to handle their tasks, if appropriate. If hired, an individual would be trained. You expect that _____ % of companies that participate in your programs are capable of expanding into the United States thereby creating job opportunities. There will be no preference given as to where in the United States a company might establish a business.

H sets the guidelines for who may receive your services. Any small and medium size

business in G can participate. A small and medium size business is defined as having 500 or less employees for a manufacturing business and \$50 million dollars or less in receipts for non-manufacturing. Interested businesses must register and be evaluated by H. H also selects the businesses who may participate. All services provided by you are free of charge.

You hold a consultation with a business once selected. You act mainly as a bridge in connecting participating companies from K with companies in the United States interested in doing business in K. Depending on the potential of each participant's project you will provide guidelines and plans to help them achieve their goals.

Issue One: 501(c)(6)

Law

Treasury Regulation 1.501(c)(6)-1 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. 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.

Rev. Rul. 59-391, 1959-2 C.B. 151, describes an organization is composed of individuals, firms, associations, and corporations, each representing a different trade, business, occupation, or profession. It was created for the purpose of exchanging information on business prospects and has no common business interest other than a desire to increase sales of members. Held, such an organization is not entitled to exemption from federal income tax as a business league under section 501(c)(6) of the Internal Revenue Code of 1954.

Rev. Rul. 66-338, 1966-2 C.B. 226 describes an organization that was formed to promote the interests of a particular retail trade and is not exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code of 1954 because it advises its members in the operation of their individual businesses and sells supplies and equipment to them.

Indiana Retail Hardware Assn., Inc. v. United States (1966), 177 Ct. Cl. 288 In this case, the Court held that when conducting particular services for members is a substantial activity of an organization , the organization will be precluded from exemption under section 501(c)(6) of the Code.

Application of Law

Treasury Regulation 1.501(c)(6)-1 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. You are not an association of persons with common business interest, rather, you are associated only by your geographic location. Your participants vary in businesses from human resources to factory creation; the only commonality being the size of their businesses. Unlike an organization described in 501(c)(6) you are aimed at promoting individual businesses rather than any business line. Therefore, you do not qualify for exemption under section 501(c)(6) of the Code.

Your operation is similar to that of the organization described in Rev. Rul. 59-391 in that the purpose of participants partaking in your services is to increase their individual business opportunities. The basic holding in that revenue ruling is that the participants have no common business interest other than a mutual desire to increase sales. This is not sufficient to establish a common line of business for the purposes of section 501(c)(6) of the Code. Your participants are not entities with a common business interest within the meaning of section 501(c)(6), but rather businesses looking to expand economic opportunities with your assistance by supporting the export of their product into another country. Accordingly, you do not qualify for exemption under section 501(c)(6) of the Code.

You are similar to the organization in Revenue Ruling 66-338 in that you advise your members, in this case, business participants, in the operation of their individual businesses. You provide consultation after selecting businesses likely to be able to cross over and establish or generate business overseas. This includes advising these entities on product development, generating investment leads, and opening up trade show opportunities to promote their product. You evaluate the potential of each participant and provide guidelines and plans to help them succeed. You are promoting individual business interests rather than an industry and for this reason you do not qualify under 501(c)(6).

In Indiana Retail Hardware Assn., Inc. v. United States the Court held that when conducting particular services for members is a substantial activity of an organization, the organization will be precluded from exemption under section 501(c)(6) of the Code. As discussed in the analysis of Revenue Rulings 59-391 and 66-338, above, essentially all of your activities are providing particular services for members. Accordingly, your organization does not qualify for exemption from federal income tax under section 501(c)(6) of the Internal Revenue Code.

Determination – Issue One:

Because you are not an association of persons with a common business interest and because all of your activities constitute services to members, you do not qualify for exemption from federal income tax under section 501(c)(6) of the Code.

Issue Two: 501(c)(4)

Law

Section 501(c)(4) of the Code provides that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes and no part of the net earnings of such entity inures to the benefit of any private shareholder or individual may be exempt from federal income tax.

Treasury Regulation 1.501(c)(4)-1 provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements and is not an action organization as set forth in paragraph (c)(3) of Regulation 1.501(c)(3)-1.

Revenue Ruling 75-199 held that where the benefit from an organization is limited to that organization's members (except for some minor and incidental benefit to the community as a whole), the organization is not operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) of the Code.

Application of Law

Section 501(c)(4) of the Code provides that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare may be exempt from federal income tax. Treasury Regulation 1.501(c)(4)-1 defines social welfare as primarily being engaged in promoting in some way the common good and general welfare of the people of the community. You do not promote the common good and general welfare of the people in the community, but rather of individual business entities. You have stated no preference is given as to where in the United States a company might establish a business. As a result, there is no particular focus on any region for development or establishment of industries for economic growth. For this reason, you are not promoting the common good of any particular community and do not meet the qualifications of 501(c)(4).

You are similar to the organization in Revenue Ruling 75-199 in that, while you do not have members, you are formed solely to benefit your participants. As you are performing particular services for your participants, your activities benefit these individuals rather than the community at large. While the formation of one business in an area may directly benefit that community, this is incidental to your overall purpose of establishing businesses and generating investment in whatever location the opportunity arises. Your purpose is to promote expansion in whatever domestic location is plausible for development and investment regardless of the economic impact on the region.

Determination Issue Two:

Because you operate only for the benefit of your participants and not for the social welfare or common good of the community in general, you do not qualify for exemption under section 501(c)(4) of the Code.

Conclusion

Because you are not an association of persons with a common business interest and because all of your activities constitute services to members, you do not qualify for exemption from federal income tax under section 501(c)(6) of the Code. Because you operate only for the benefit of your members and not for the social welfare or common good of the community in general, you do not qualify for exemption under section 501(c)(4) of the Code. Accordingly, we conclude that you do not qualify for exemption.

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,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892