



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: September 12, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: **201749016**
Release Date: 12/8/2017

UIL: 501.06-00, 501.06-01

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(6) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
 P.O. Box 2508
 Cincinnati, OH 45201

Date: July 19, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

- B = Limited Liability Company
- C = County
- D = Agreement
- E = Date
- F = Name
- G = Number
- H = Names
- J = Dates

x dollars = Amount
 y dollars = Amount

UIL:

- 501.06-00
- 501.06-01

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(6) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

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

Facts

You were formed for the purpose of negotiating and entering into a power purchase arrangement/agreement that would be acceptable to your members and B, the developer of a project for a new natural gas fired plant in C. You entered into such an agreement called D, with B on E which you consider your organizing document. The D states you were formed for your members to collaborate to facilitate the development of the project, to develop proposed terms and conditions for the members to buy energy, and to find opportunities for the cooperative procurement of natural gas, natural gas transportation, natural gas storage and natural gas scheduling services, and, to evaluate alternatives for the scheduling and taking delivery of your members prorated share of output. Further, the terms in D will provide additional revenue assurance to help B obtain needed financing of the project from other sources. B must have this financing before it can begin the detailed engineering and construction of the project.

You have G members who consist of H. All members are municipal and cooperative electric utility entities from different geographical locations. Your only activities consist of hiring of a law firm to represent your members as a group for the purpose of negotiating the power purchase arrangement/agreement with B. Each member has one vote.

You listed F as your only board member on the Form 1024. In addition, D was signed only by F.

Furthermore, you wrote that you were formed to enter into D to achieve the mutual advantage of having common funding of certain activities for the development of mutually acceptable terms and conditions associated with the potential purchase of energy and capacity from B.

Your only expenses are for third party legal services. These will be allocated among your members based on the terms in D which states that your expenses are allocated among members based on their individual usage divided by the total usage for all members. Your legal expenses to date are x dollars. You expect an additional y dollars in legal expenses. Once the contracts with B and H are finalized, your operations will terminate. This will be after J.

Law

Section 501(c)(6) of the Code 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.

Treasury Regulation Section 1.501(c)(6)-1 defines a business league as an association having a common business interest, whose purpose is to promote the common business interest and not to engage in a regular business of a kind ordinarily carried on for profit. Its activities are directed to the improvement of business conditions of one or more lines of business rather than the performance of particular services for individual persons.

Revenue Ruling 56-65, 1956-1 C.B. 199 describes an organization whose principal activity consists 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 is performing particular services for individual persons. Such organization, therefore, is not entitled to exemption from Federal income tax under section 501(c)(6) of the Internal Revenue Code of 1954 as a business league even though it performs functions which are of benefit to the particular industry and the public generally.

Revenue Ruling 66-338, 1966-2 C.B. 226 describes an organization that provided business consulting services, electronic management services and low cost office supplies and store fixtures to members of a particular retail trade. It allowed its members to secure supplies, equipment and services more cheaply than if they had to secure them on an individual basis. Its primary purpose was providing services to its members and not improving business conditions in their trade as a whole. In addition, its activities constituted a business of a kind ordinarily carried on for profit.

Rev. Rul. 71-175, 1971-1 C.B. 153 states that a nonprofit organization whose principal activity was the operation of a telephone-answering service for member doctors is not exempt under Section 501(c)(6) of the Code. By providing a telephone-answering service the organization relieves the individual members of the necessity of securing this service commercially, resulting in a convenience or economy in the conduct of the

medical practice of its individual members. Therefore, the organization is rendering particular services for individual persons as distinguished from the improvement of business conditions in the medical profession and public health area generally.

The American Automobile Association v. Commissioner of Internal Revenue, 19 T.C. 1146 (1953) held that an organization whose principal activities consist of performing particular services, and securing benefits, for its members, does not qualify for exemption under Section 501(c)(6) of the Code.

In Indiana Retail Hardware Assn., Inc. v. United States (1966), 177 Ct. Cl. 288, 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.

In Bluetooth SIG Inc. v. U.S., 611 F.3d 617 (9th Cir. 2010), the Court examined an organization that was formed to advance the common business interests of its members in the development and regulation of technical standards for the compatibility and interoperability of wireless products and devices within a wireless personal area network. The organization develops specifications and use applications and promotes consumer awareness and marketing through its Bluetooth technology and trademark. The Court held that the organization was not a tax-exempt business league under Section 501(c)(6) of the Code because the organization's activities exclusively benefit its members, rather than an entire line of business. The Court noted that it "strains credulity" for the organization to argue that its services indirectly benefit the industry as a whole simply by generating consumer awareness of the availability and reliability of its technology.

Application of law

You are not described in Section 501(c)(6) of the Code because you are primarily organized and operated to perform particular services for your members.

You are not organized in accordance with Section 501(c)(6) of the Code. You did not submit a document showing you were legally formed. You only submitted D signed by F which is an agreement with B.

You are not described in Treas. Reg. Section 1.501(c)(6) because you are primarily organized and operated so members can pool their resources to pay legal expenses to negotiate on their behalf as private, individual companies as evidenced by the terms in your agreement. In addition, the method in which expenses are allocated among your members also indicates you are providing services to members. Moreover, your members formed you to achieve the common advantage of having pooled funding to obtain acceptable terms and conditions concerning the power purchase arrangement.

You are similar to the organizations in Revenue Rulings 56-65 and 66-368. You are operated primarily to negotiate the most favorable terms in a power purchase agreement for the individual interests of your members rather than negotiate for the improvement of business conditions within the industry. Once the agreement is negotiated and contracts are executed with your members, your operations will cease. Like these organizations in the revenue rulings you are performing a particular service to your members rather than directing your activities to the improvement of business conditions of your industry as a whole.

You are similar to the organization in American Automobile Association in that, although the negotiated terms of the power purchase agreement may benefit the community, your primary activity cannot be characterized as

fostering the improvement of business conditions throughout the industry. Rather, your services are intended to improve your members negotiating power with B.

You are similar to the organization in Indiana Retail Hardware Assn because your primary activity is the performance of services to members. Because this is your sole activity, you are not exempt under Section 501(c)(6) of the Code.

You are similar to the organization described in Bluetooth SIG., Inc. because you were formed to advance the common business interests of your members to negotiate an agreement to purchase energy. Your activities exclusively benefit your members, rather than an entire line of business. Similar to the organization in Bluetooth SIG, Inc., it would be difficult to argue that your services benefit the industry as a whole because you are paying legal expenses to negotiate the best terms for a power purchase arrangement for your members.

Your position

You believe you meet all the requirements for exemption under Section 501(c)(6) of the Code for the following reasons:

- You have a common business interest and are not-for profit.
- Your activities are devoted to improving business conditions of the geographic electric utility line of business to fulfill the needs of your non-for-profit members.
- Interests of the communities that the plant will serve will be advanced to ensure low-cost electric provided.
- You have no net earnings and are not organized for profit.
- You have meaningful membership support achieved through member assessment/dues.
- You are a membership organization.

Our response to your position

You failed to provide any additional information from which it can be concluded that your activities primarily accomplish purposes within the meaning of Section 501(c)(6) of the Code. You are paying legal expenses for negotiating the most favorable terms for a power purchase arrangement for the individual interest of each member. This illustrates you provide services for your members rather than work to improve the conditions of a line of business as discussed previously. This precludes exemption under Section 501(c)(6) of the Code.

Conclusion

Negotiating a contract for provision of electricity from a natural gas power plant and associated legal costs for your members is providing particular services for individual persons and thus does not meet one of the requirements to be exempt under Section 501(c)(6) of the Code. In addition, your activities are not directed to the improvement of the business conditions of the line of business of its members as a whole because your activities are aimed only at improving the interest of your individual members. Therefore, you do not meet the requirements for exemption and do not qualify for exemption under Section 501(c)(6) of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number

- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

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

For authorized representatives:

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

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

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

U.S. mail:

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

Street address for delivery service:

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

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Stephen A Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892