



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201431032**

Release Date: 8/1/2014

Date: May 6, 2014

UIL Code: 501.33-00

501.35-00

501.36-00

533.00-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

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)(3). 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.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under 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, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Tamera Ripperda
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: March 14, 2014

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

N = Name
P = State
Q = Date
R = Date
S = Date
u dollars = amount

UIL:

501.33-00
501.35-00
501.36-00
533.00-00

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 sections 501(c)(3), 501(c)(4), 501(c)(5) or 501(c)(6). The basis for our conclusion is set forth below.

Issue(s)

1. Do you qualify for exemption under section 501(c)(3)? No, for the reasons described below.
2. Do you qualify under section 501(c)(4)? No, for the reasons described below.
3. Do you qualify under section 501(c)(5)? No, for the reasons described below.
4. Do you qualify under section 501(c)(6) of the Code? No, for the reasons described below.

Facts

You were incorporated in the state of P on Q as a nonprofit mutual benefit corporation for the specific purpose of the discussion of technology, diagnostic advances, and

current vehicles. You filed an amendment on R and became organized as a nonprofit public benefit corporation. The amendment also stated your purpose to be labor/ agricultural/horticultural.

On S, you submitted a Form 1023 requesting exemption under Section 501(c)(3). You later submitted a Form 1024 requesting exemption under Section 501(c)(5) and subsequently requested exemption under 501(c)(4) and 501(c)(6).

You are a membership organization whose membership is composed of foremen from several different states. Your members work for N car dealerships, which service automobiles built by N. Your primary activity is to arrange educational meetings for your members as well as guests from N's headquarters. The purpose of these meetings is for your members to obtain knowledge and then share this knowledge including advances in N automobile technology and new features found on N automobiles with their particular dealership. This ultimately improves the customer's experience. You only have a few educational events per year which are held at convenient hotels usually near an airport. There are usually presenters who come from N's headquarters, who present on such topics as diagnostic advances of current vehicles, new technologic advances for N cars as well as new and emerging issues that individual foremen may be encountering to see if others are facing the same problems and how they are addressing such problems. The result is that the shop foremen will have a better understanding of the N auto which is needed to solve routine repair problems that may be encountered at the dealership level.

Members pay annual membership dues of u dollars and these dues are your only source of revenue. Your expenses are for the costs of the meetings.

Finally you have a three person volunteer board and have not adopted bylaws.

Law

Issue 1

Section 501(a) of the Code provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized as exempt if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages

primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purpose unless it serves a public rather than a private interest.

Revenue Ruling 68-504, 1968-2 C.B. 211 describes a nonprofit organization formed and operated to conduct an educational program for bank employees in a particular urban area that qualified for exemption. No person could take the courses unless he was a member of the organization but membership was open to employees of all banks in the area.

Revenue Ruling 74-116, 1974-1 CB 127 describes a membership organization devoted to developing and exchanging research data among users of a specific type of computer. In furtherance of its objectives, the organization conducted meetings and seminars at which operational and technical problems relating to the use of this computer were discussed. Representatives of the manufacturer were invited to attend these functions to answer questions concerning the computer's operation. By making specialized information available to its members focusing on a specific type of computer, it was found the organization served the private interest of its members rather than a public interest and was not exempt from federal income tax under section 501(c)(3) of the Code.

Issue 2

Section 501(c)(4) of the Internal Revenue Code provides exemption to 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, education or recreational purposes. The net earnings of such entity may not inure to the benefit of any private shareholder or individual.

Issue 3

Section 501(c)(5) of the Code provides for the exemption from federal income tax of labor organizations.

Section 1.501(c)(5)-1(a) of the Income Tax Regulations provides that the labor organizations contemplated by section 501(c)(5) of the Code are those which have no net earnings inuring to the benefit of any member and have as their objects the betterment of the conditions of those engaged in labor, the improvement of the grade of their products, and the development of a higher

degree of efficiency in their respective occupations.

Rev. Rul. 77-46, 1977-1 CB 147 describes a non-qualifying organization under Section 501(c)(5). It did not qualify under Section 501(c)(5) because it did not conduct activities that are commonly or historically recognized as characteristic of labor organizations, or be closely related and necessary to accomplishing the principal purposes of exempt labor organizations. Historically, labor organizations were primarily organized to negotiate wages, hours, and working conditions.

Issue 4

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

Section 1.501(c)(6)-1 of the Income Tax Regulations describes a business league as 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.

Revenue Ruling 68-182, 1968-1 CB 263 states an organization which promoted a single brand within a line of business will not qualify for exemption from federal income tax under section 501(c)(6) of the Code.

Revenue Ruling 83-164, 1983-2 CB 95 describes an organization whose members represent diversified businesses that own, rent, or lease computers produced by a single computer manufacturer. This organization did not qualify under Section 501(c)(6) of the Code because it failed to meet the line of business test but instead was found to have served only a "segment of a line" include groups composed of businesses that have licenses to a single patented product

In National Muffler Dealers Association, Inc. v. United States, 440 U.S. 472, Ct. D. 1997, 1979-1 C.B. 198 (1979), the Court held that an organization of muffler dealers franchised by Midas International Corporation did not qualify for exemption from federal income tax as a business league under section 501(c)(6) of the Code. The organization's purpose was too narrow to satisfy the line of business test of section 1.501(c)(6)-1 of the regulations.

Application of Law

Issue 1

You are not described in section 501(c)(3) of the Code because you fail the operational test as per Section 1.501(c)(3)-1(a)(1) of the Regulations.

You are not described in Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations because you are operating for the private interests of your members, N and N dealerships. This is illustrated by the fact that your training is only directed to foremen of N dealerships which results in substantial private benefit to N and your members.

You are not like the qualifying organization described in Revenue Ruling 68-504, because your membership is limited to foremen who work for N dealerships from several states. Your training is not focused on a particular industry as a whole in a geographical area but on issues pertaining to a particular manufacturer.

You are similar to the organization described in Revenue Ruling 74-116 because you are a membership organization whose educational activities pertain to a specific type of automobile. Because your training is limited to a specific type of automobile, you are serving private interests, which precludes exemption under Section 501(c)(3).

Issue 2

You do not meet Section 501(c)(4) of the Code because you are operating primarily for the convenience of members, N dealerships and N. This is illustrated by the fact that your training is solely focused on the N automobile and members must be a foreman at N dealerships and generally only personnel from N headquarters provides the training. Furthermore, your goal is for foremen to share the knowledge with their particular dealership to provide better service. Consequently your activities do not promote the common good and general welfare of the people of the community as a whole because you are serving primarily the private interests of N and N dealerships. In addition, you are further precluded from qualifying as a Local Association of Employees within the meaning of 501(c)(4) because your membership is not local in nature; your membership is comprised of individuals from several states.

Issue 3

You are not as described in Section 501(c)(5) of the Code and Section 1.501(c)(5)-1(a) of the Income Tax Regulations because you do not have as your primary objectives the betterment of conditions of those engaged in labor, the improvement of the grade of your products and the development of a higher degree of efficiency. You were formed for the benefit of your members, employees of N, N dealerships and N headquarters to provide training on the N brand of automobiles.

Like the organization described in Rev. Rul. 77-46, you do not conduct activities historically characteristic of a labor organization. You were not formed to negotiate wages, hours and working conditions but you are operating for the convenience of members, N dealerships and N headquarters by providing educational events directed toward private interests precluding you from qualifying for exemption under Section 501(c)(5).

Issue 4

You are not described in Section 501(c)(6) of the Code because you are not organized and operated as a business league.

You are not described in Section 1.501(c)(6)-1 of the Income Tax Regulations because your activities are directed to perform services for the benefit of a particular manufacturer rather than to the improvement of business conditions of one or more lines of business.

You are like the organizations described in Revenue Rulings 68-182 and 83-164, because your activities are exclusively directed for foremen at N dealerships. You were established for foremen at N dealerships to receive training on N cars from personnel at N headquarters as well as collaborate on issues that individual foremen may face. Because you are only improving business conditions in a segment of line of a business, you are precluded from exemption under Section 501(c)(6).

You are similar to the organization described in National Muffler Dealers Association, because your activities serve members who only work for N dealerships. You provide particular services toward one automobile manufacturer which does not represent one or more line of businesses. Therefore, you are precluded from exemption under Section 501(c)(6).

Applicant's Position

You applied initially under IRC section 501(c)(3) you then applied under section 501(c)(5) and 501(c)(6). You also submitted amended Articles of Incorporation to change from a mutual benefit to a public benefit corporation.

You state that your focus is on automotive technology, the N brand of auto is just part of your larger agenda and that N dealerships involved sell different makes and models of automobiles, which means the meetings for shop foremen do not fit a narrow purpose or create any special advantage for them. More so you only admit shop foremen to educational meetings and only discuss automotive technology, diagnostic advances and current vehicles. Finally no part of the net earnings inure to the benefit of any private shareholder or individual.

Service Response to Applicant's Position

You failed to provide any additional information from which it can be concluded that you are primarily organized and operated in accordance with sections IRC 501(c)(3), 501(c)(4), 501(c)(5) or 501(c)(6) as described in the preceding facts and analysis.

Conclusion

You do not qualify under Section 501(c)(3) and Section 501(c)(4) because you are serving the private interests of N foremen, N dealerships and N headquarters. You do not qualify under Section 501(c)(5) because you do not have as your objectives, the betterment of conditions of those engaged in labor, the improvement of the grade of your products and the development of a higher degree of efficiency. You do not meet Section 501(c)(6) because your benefits are directed toward a segment of line of a business.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a protest statement explaining your views and reasoning. You must submit the protest statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your protest 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.

Types of information that should be included in your protest statement can be found in Publication 892. The protest statement must be accompanied by the following declaration:

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

Your protest will be considered incomplete without this statement.

If an organization's representative submits the protest, a substitute declaration must be included stating that the representative prepared the protest and accompanying documents; and whether the representative knows personally that the statements of facts contained in the protest 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. If you want representation 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. You can find more information about representation in 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 file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

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

Please send your protest statement, 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 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,

Director, Exempt Organizations

Enclosure: Publication 892